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Legislative History – Montana Session Law

Chapter: 2 Session L: 2021

Bill Number: SB 65

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	Senate
Committee: Business & Labor	Committee: Business, Labor, & Economic Affairs
Hearing Date(s): 1/22/2021	Hearing Date(s): 1/08/2021
Committee Report: 1/26/2021	Committee Report: 1/15/2021

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 12/10/2025

Notes: Audio/Video recordings can be found here: https://sg001-harmony.sliq.net/00309/Harmony/en

Thank you!

AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; AMENDING SECTION 27-1-719 AND 70-24-303, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 8], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, for the purposes of [sections 1 through 8], physicians, physician assistants, nurse practitioners, nurses, nursing assistants, chiropractors, pharmacists, pharmacy technicians, dentists, dental hygienists, optometrists, medication aides, respiratory therapist practitioners, professional

counselors, occupational therapists, midwifes, psychologists, and other health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

(3) "Health care provider" means and includes, for the purposes of [sections 1 through 8], a health care professional, health care facility, home health care facility, assisted living facility, and any other person or facility otherwise authorized or permitted by any federal or state statute, regulation, order, or public health guidance to administer health care services or treatment. It does not include a government entity or a health care professional that is employed by a government entity.

(4) "Person" means an individual, corporation, nonprofit corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, place of worship, personal representative, trustee, or any other legal or commercial entity. It does not include a government entity.

(5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

(6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

(7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of

health.

(8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections (8)(a) through (8)(e).

Section 2. Liability. Except as provided in [sections 3 through 8], a person is not liable for civil damages for injuries or death from or relating to exposure or potential exposure to covid-19 unless the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort.

Section 3. Premises owner's duty of care -- limited liability. (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, is not liable for civil damages for injuries or death sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort.

(2) The standard established in subsection (1) applies in landlord-tenant claims made under 70-24-303(1)(b) through (1)(e) for injuries or death sustained from an individual's exposure to covid-19.

Section 4. Liability of health care providers. A health care provider is not liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the response to covid-19 unless the health care provider caused the death or injury of an individual through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort. This section applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

Section 5. Supplies, equipment, and products designed, manufactured, labeled, sold,

distributed, and donated in response to covid-19. (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 is not liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 is not liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or property damage through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and public health guidance. (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury, death, or property damage.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of public health guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

Section 7. Limitation on action. A government order, regulation, or public health guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or public health guidance.

Section 8. Limitation on requirements. (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section 9. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition <u>that is</u> unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the

seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the

seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

Section 10. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and

habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to

perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through 8].

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective on passage and approval.

Section 15. Termination. [This act] terminates January 1, 2031.

- END -

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING SAFE HARBOR AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; AND AMENDING SECTION 27-1-719, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

I hereby certify that the within bill,

SB 65, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____day

of_____, 2021.

_____

Speaker of the House

Signed this _____day

of_____, 2021.

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
02/10/21	Chapter Number Assigned				
02/10/21	(S) Signed by Governor				
02/09/21	(S) Transmitted to Governor				
02/09/21	(H) Signed by Speaker				
02/09/21	(S) Signed by President				
02/08/21	(C) Printed - Enrolled Version Available				
02/08/21	(S) Returned from Enrolling				
02/04/21	(S) Sent to Enrolling				
02/04/21	(S) 3rd Reading Passed as Amended by House		32	18	
02/04/21	(S) Scheduled for 3rd Reading				
02/03/21	(S) 2nd Reading House Amendments Concurred		29	21	
02/03/21	(S) Scheduled for 2nd Reading				
02/02/21	(H) Returned to Senate with Amendments				
02/02/21	(H) 3rd Reading Concurred		64	36	
02/02/21	(H) Scheduled for 3rd Reading				
02/01/21	(H) 2nd Reading Concurred		66	33	
02/01/21	(H) Scheduled for 2nd Reading				
01/27/21	(H) Committee Report--Bill Concurred as Amended	(H) Business and Labor			
01/26/21	(H) Committee Executive Action--Bill Concurred as Amended	(H) Business and Labor	12	8	
01/22/21	(H) Hearing	(H) Business and Labor			
01/19/21	(H) First Reading				
01/19/21	(H) Referred to Committee	(H) Business and Labor			
01/18/21	(S) Transmitted to House				
01/18/21	(S) 3rd Reading Passed		37	13	
01/18/21	(S) On Motion Rules Suspended		30	20	
01/18/21	(S) 2nd Reading Passed		38	12	
01/18/21	(S) 2nd Reading Motion to Amend Failed		20	30	
01/18/21	(S) 2nd Reading Motion to Amend Failed		7	43	
01/18/21	(S) Scheduled for 2nd Reading				
01/15/21	(S) Committee Report--Bill Passed as Amended	(S) Business, Labor, and Economic Affairs	8	3	
01/15/21	(S) Committee Executive Action--Bill	(S) Business, Labor, and	8	3	

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
	Passed as Amended	Economic Affairs			
01/14/21	(C) Amendments Available				
01/08/21	(S) Hearing	(S) Business, Labor, and Economic Affairs			
01/05/21	(S) First Reading				
01/05/21	(C) Introduced Bill Text Available Electronically				
01/05/21	(S) Referred to Committee	(S) Business, Labor, and Economic Affairs			
01/05/21	(S) Introduced				
01/04/21	(C) Draft Delivered to Requester				
01/02/21	(C) Draft Ready for Delivery				
12/31/20	(C) Executive Director Final Review				
12/31/20	(C) Draft Ready for Delivery				
12/30/20	(C) Draft in Assembly				
12/30/20	(C) Executive Director Review				
12/30/20	(C) Bill Draft Text Available Electronically				
12/30/20	(C) Draft in Final Drafter Review				
12/29/20	(C) Draft in Input/Proofing				
12/28/20	(C) Draft to Drafter - Edit Review				
12/22/20	(C) Draft in Edit				
12/21/20	(C) Draft in Legal Review				
12/21/20	(C) Draft to Requester for Review				
12/14/20	(C) Draft to Requester for Review				
12/14/20	(C) Draft to Requester for Review				
12/08/20	(C) Draft On Hold				
11/24/20	(C) Draft to Requester for Review				
11/20/20	(C) Draft Taken Off Hold				
11/16/20	(C) Draft On Hold				
11/10/20	(C) Draft Request Received				

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING ~~SAFE HARBOR~~ AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; ~~AND~~ AMENDING SECTION 27-1-719, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through ~~6~~ 8], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, for the purposes of [sections 1 through 8], physicians, physician assistants, nurse practitioners, nurses, nursing assistants, chiropractors, pharmacists, pharmacy technicians, dentists, dental hygienists, medication aides, respiratory therapist practitioners, professional counselors, occupational therapists, midwifes, psychologists, and other health care practitioners who are licensed, certified,

or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

~~(3) "Minimum medical condition" means an inpatient hospitalization or death where the primary cause of the inpatient hospitalization or death is covid-19.~~

(3) "Health care provider" means and includes, for the purposes of [sections 1 through 8], a health care professional, health care facility, home health care facility, and any other person or facility otherwise authorized or permitted by any federal or state statute, regulation, order, or public health guidance to administer health care services or treatment. It does not include a government entity or a health care professional that is employed by a government entity.

(4) "Person" means an individual, corporation, nonprofit corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, place of worship, personal representative, trustee, or any other legal or commercial entity. It does not include a government entity.

~~(4)~~(5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

~~(5)~~(6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

~~(6)~~(7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of health.

~~(7)~~(8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections ~~(7)(a) through (7)(e)~~ (8)(a) through (8)(e).

NEW SECTION. **Section 2. ~~Actual injury~~Liability.** ~~A~~ Except as provided in [sections 3 through 8], a person may not bring or maintain a civil action alleging exposure or potential exposure to covid-19 unless~~:~~

~~(1) the civil action relates to a minimum medical condition;~~

~~(2) the civil action involves an act that was intended to cause harm; or~~

~~(3)~~ the civil action involves an act or omission that constitutes gross negligence, ~~or~~ willful and wanton misconduct, or intentional tort.

NEW SECTION. **Section 3. Premises owner's duty of care -- limited liability.** (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, ~~shall not be~~ is not liable for civil damages for injuries sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless ~~one or both of the following apply to the person who possesses or is in control of the premises:~~

~~(1) the person who possesses or is in control of the premises exposes the individual to covid-19 through an act of gross negligence or willful and wanton misconduct; or~~

~~(2) the person who possesses or is in control of the premises intentionally exposes the individual to covid-19~~ the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort.

(2) The standard established in subsection (1) applies in landlord-tenant claims made under 70-24-303(1)(b) through (1)(e) for injuries sustained from an individual's exposure to covid-19.

~~NEW SECTION. **Section 4. Safe harbor for compliance with regulations, executive orders, or public health guidance.** A person shall not be held liable for civil damages for injuries sustained from an alleged exposure or potential exposure to covid-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.~~

NEW SECTION. **Section ~~5~~4. Liability of health care providers.** A health care provider ~~shall not be~~ is not liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the ~~state's~~ response to covid-19 unless the health care provider caused the death or injury of an individual through an act ~~of~~ or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort. This ~~subsection~~ section applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the ~~state's~~ response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the

diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

NEW SECTION. **Section ~~6~~5. Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to covid-19.** (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ is not liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through ~~an act of~~ an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ is not liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or property damage through an act ~~of~~ or omission that constitutes gross negligence, willful and wanton

misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

NEW SECTION. **Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

NEW SECTION. **Section 7. Limitation on action.** A government order, regulation, or guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or guidance.

NEW SECTION. **Section 8. Limitation on requirements.** (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section ~~109~~. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

Section ~~11~~10. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

NEW SECTION. **Section ~~12~~11. Codification instruction.** [Sections 1 through ~~6~~ 8] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through ~~6~~ 8].

NEW SECTION. **Section ~~13~~12. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 13. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 15. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to claims made on or after January 1, 2021.

NEW SECTION. **Section 16. Termination.** [This act] terminates January 1, 2031.

- END -

DRAFT

Amendments to Senate Bill No. 65
1st Reading Copy

Requested by Steve Fitzpatrick
For the (S) Business Labor and Economic Affairs

Prepared by Sonja Nowakowski
01/06/2021, 02:31:57

1. Title, line 6.
Strike: "SAFE HARBOR"
Insert: "AFFIRMATIVE DEFENSE"

2. Title, line 8.
Following: "DEFINITIONS;"
Strike: "AND"
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE"

3. Page 1, line 11.
Insert: "WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19."

4. Page 1, line 12.
Strike: "6"
Insert: "8"

5. Page 1, line 17.
Following: "means"
Insert: ", for the purposes of [sections 1 through 8],"
Following: "physicians"
Insert: ", physician assistants, nurse practitioners, nurses, nursing assistants, chiropractors, pharmacists, pharmacy technicians, dentists, dental hygienists, medication aides, respiratory therapist practitioners, professional counselors, occupational therapists, midwifes, psychologists,"

6. Page 1, line 22 through line 23.
Strike: subsection (3) in its entirety
Insert: "(3) "Health care provider" means and includes, for the purposes of [sections 1 through 8], a health care professional, health care facility, home health care facility, and any other person or facility otherwise authorized or permitted by any federal or state statute, regulation, order, or public health guidance to administer health care services or treatment. It does not include a government entity or a health care professional that is employed by a government entity.
(4) "Person" means an individual, corporation, nonprofit corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, place of worship, personal representative, trustee, or any other legal or commercial entity,. It does not include a government entity."

Renumber: subsequent subsections

7. Page 2, line 23.
Strike: "(7)(a) through (7)(e)"
Insert: "(8)(a) through (8)(e)"

8. Page 2, line 25.
Strike: "**Actual injury**"
Insert: "Liability"

9. Page 2, line 25.
Strike: "A"
Insert: "Except as provided in [sections 3 through 8], a"

10. Page 2, line 26 through page 3, line 1.
Following: "unless" on line 26
Strike: ":" on line 26 through "(3)" on page 3, line 1

11. Page 3, line 1.
Following: "act"
Insert: "or omission"

12. Page 3, line 1.
Following: "negligence"
Insert: ","
Strike: "or"

13. Page 3, line 1.
Following: "misconduct"
Insert: ", or intentional tort"

14. Page 3, line 3.
Following: "**liability.**"
Insert: "(1)"

15. Page 3, line 5.
Following: "premises,"
Strike: "shall not be"
Insert: "is not"

16. Page 3, line 7 through line 12.
Strike: "one" on line 7 through "covid-19" on line 12
Insert: "the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort"

17. Page 3, line 13.
Insert: "(2) The standard established in subsection (1) applies in landlord-tenant claims made under 70-24-303(1)(b) through (1)(e) for injuries sustained from an individual's exposure to covid-19."

18. Page 3, line 14 through line 19.
Strike: section 4 in its entirety
Renumber: subsequent sections

19. Page 3, line 21.
Following: "provider"

Strike: "shall not be"
Insert: "is not"

20. Page 3, line 24.
Strike: "state's"

21. Page 3, line 25.
Strike: "of"
Insert: "or omission that constitutes"

22. Page 3, line 25.
Strike: "subsection"
Insert: "section"

23. Page 4, line 3.
Following: the first "the"
Strike: "state's"

24. Page 4, line 23.
Following: "covid-19"
Strike: "shall not be"
Insert: "is not"

25. Page 4, line 26.
Strike: "an act of"
Insert: "an act or omission that constitutes"

26. Page 5, line 1.
Strike: "shall not be"
Insert: "is not"

27. Page 5, line 4.
Strike: "of"
Insert: "or omission that constitutes"

28. Page 5.
Following: line 6
Insert: "NEW SECTION. **Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal

or state statute, regulation, order, or public health guidance related to covid-19."

Insert: "NEW SECTION. **Section 7. Limitation on action.** A government order, regulation, or guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or guidance."

Insert: "NEW SECTION. **Section 8. Limitation on requirements.** (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care."

Renumber: subsequent sections

29. Page 5, line 22.
Strike: "3"
Insert: "2"

30. Page 6, line 22.
Strike: "3"
Insert: "2"

31. Page 7.
Following: line 8
Insert: "**Section 10.** Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the

tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h).""

Renumber: subsequent sections

32. Page 7.
Following: line 14
Insert: "NEW SECTION. **Section 13. {standard} Severability**. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Insert: "NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on passage and approval."

Insert: "NEW SECTION. **Section 15. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to claims made on or after January 1, 2021."

Insert: "NEW SECTION. **Section 16. Termination.** [This act] terminates January 1, 2031."

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19 OR ANOTHER COMMUNICABLE DISEASE; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING ~~SAFE HARBOR~~ AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; PROVIDING FOR STANDING; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19 OR ANOTHER COMMUNICABLE DISEASE; PROVIDING DEFINITIONS; ~~AND~~ AMENDING ~~SECTION~~ SECTIONS 27-1-719 AND 70-24-303, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19 and other communicable diseases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through ~~6~~ ~~8~~ 9], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means an illness resulting from a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission can occur either directly or indirectly.

~~(1)~~(2) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused

by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

~~(2)~~(3) "Health care professional" means, FOR THE PURPOSES OF [SECTIONS 1 THROUGH ~~8~~ 9], physicians, PHYSICIAN ASSISTANTS, NURSE PRACTITIONERS, NURSES, NURSING ASSISTANTS, CHIROPRACTORS, PHARMACISTS, PHARMACY TECHNICIANS, DENTISTS, DENTAL HYGIENISTS, MEDICATION AIDES, RESPIRATORY THERAPIST PRACTITIONERS, PROFESSIONAL COUNSELORS, OCCUPATIONAL THERAPISTS, MIDWIFES, PSYCHOLOGISTS, and other health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

~~(3) "Minimummedical condition" means an inpatient hospitalization or deathwhere the primary cause of the inpatient hospitalization or death is covid-19.~~

~~(3)~~(4) "HEALTH CARE PROVIDER" MEANS AND INCLUDES, FOR THE PURPOSES OF [SECTIONS 1 THROUGH ~~8~~ 9], A HEALTH CARE PROFESSIONAL, HEALTH CARE FACILITY, HOME HEALTH CARE FACILITY, AND ANY OTHER PERSON OR FACILITY OTHERWISE AUTHORIZED OR PERMITTED BY ANY FEDERAL OR STATE STATUTE, REGULATION, ORDER, OR PUBLIC HEALTH GUIDANCE TO ADMINISTER HEALTH CARE SERVICES OR TREATMENT. IT DOES NOT INCLUDE A GOVERNMENT ENTITY OR A HEALTH CARE PROFESSIONAL THAT IS EMPLOYED BY A GOVERNMENT ENTITY.

~~(4)~~(5) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, NONPROFIT CORPORATION, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS OR SIMILAR TRUST, ASSOCIATION, JOINT VENTURE, PLACE OF WORSHIP, PERSONAL REPRESENTATIVE, TRUSTEE, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY. IT DOES NOT INCLUDE A GOVERNMENT ENTITY.

~~(4)~~ ~~(5)~~(6) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

~~(5)~~ ~~(6)~~(7) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

~~(6)~~ ~~(7)~~(8) "Public health guidance" includes guidance related to covid-19 or another communicable disease issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of health.

~~(7)~~ ~~(8)~~(9) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 ~~-~~or another communicable disease or to prevent the spread of covid-19 or another communicable disease;

(b) medical devices, equipment, and supplies used to treat covid-19 or another communicable disease, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or another communicable disease or to prevent the spread of covid-19 or another communicable disease;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or another communicable disease or to prevent the spread of covid-19 or another communicable disease;

(d) medications used to treat covid-19 or another communicable disease, including medications prescribed or dispensed for off-label use to attempt to treat covid-19 or another communicable disease;

(e) tests to diagnose or determine immunity to covid-19 or another communicable disease; and

(f) a component of an item described in subsections ~~(7)(a) through (7)(e)~~ ~~(8)(A) THROUGH (8)(E)~~(9)(A) THROUGH (9)(E).

NEW SECTION. **Section 2. ~~Actual injury~~ LIABILITY.** ~~A~~ EXCEPT AS PROVIDED IN [SECTIONS 3 THROUGH ~~8~~ 9], A person may not bring or maintain a civil action alleging exposure or potential exposure to covid-19 or another communicable disease unless~~:~~

~~(1) the civil action relates to a minimum medical condition;~~

~~(2) the civil action involves an act that was intended to cause harm; or~~

~~(3)~~ the civil action involves an act OR OMISSION that constitutes gross negligence, ~~or~~ willful and wanton misconduct, OR INTENTIONAL TORT.

NEW SECTION. **Section 3. Standing.** (1) A civil action in accordance with [sections 1 through 9] may be initiated only by a person who:

(a) demonstrates concrete adverseness and individual harm;

(b) subject to subsection (2), provides evidence of exposure or potential exposure to covid-19 or another communicable disease on a date and at a time and place certain; and

(c) offers evidence that the person could not take an alternative action to avoid the exposure or potential exposure.

(2) If a person is unable to meet the requirements of subsection (1)(b):

(a) the defendant may move for, and the judge may grant, summary judgment on one or more of the issues raised by the civil action; and

(b) the person bringing the civil action is responsible for all legal fees.

NEW SECTION. **Section 4. Premises owner's duty of care -- limited liability.** (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, ~~shall not be~~ IS NOT liable for civil damages for injuries sustained from the individual's exposure to covid-19 or another communicable disease, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless ~~one or bothof the following apply to the person who possesses or is in control of the premises:~~

~~(1) the person who possesses or is in control of the premises exposes the individual to covid-19 through an act of gross negligenceor willful and wanton misconduct; or~~

~~(2) the person who possesses or is in control of the premises intentionally exposes the individual to covid-19~~ THE CIVIL ACTION INVOLVES AN ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL AND WANTON MISCONDUCT, OR INTENTIONAL TORT.

(2) THE STANDARD ESTABLISHED IN SUBSECTION (1) APPLIES IN LANDLORD-TENANT CLAIMS MADE UNDER 70-

24-303(1)(B) THROUGH (1)(E) FOR INJURIES SUSTAINED FROM AN INDIVIDUAL'S EXPOSURE TO COVID-19 or another communicable disease.

~~NEW SECTION.~~**~~Section 4.Safe harbor for compliance with regulations, executive orders, or public health guidance.~~**~~A person shall not be held liable for civil damages for injuries sustained from an alleged exposure or potential exposure to covid-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent withafederal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.~~

NEW SECTION. **Section 5. Liability of health care providers.** A health care provider ~~shall not be~~ IS NOT liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the ~~state's~~ response to covid-19 or another communicable disease unless the health care provider caused the death or injury of an individual through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort. This ~~subsection~~ SECTION applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19 or another communicable disease;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19 or another communicable disease;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 or another communicable disease when those acts or omissions support the ~~state's~~ response to covid-19 or another communicable disease, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 or another communicable disease that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19 or another communicable disease; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

NEW SECTION. **Section 6. Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to covid-19 or another communicable disease.** (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 or another communicable disease ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through ~~an act of~~ AN ACT OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 or another communicable disease ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or property damage through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 or another communicable disease as defined in [section 1].

NEW SECTION. **Section 7. Affirmative defense -- reasonable measures consistent with regulations, orders, and guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 or another communicable disease that was applicable to the person or activity at issue at the time of the alleged injury.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19 or another communicable disease.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19 or another communicable disease.

NEW SECTION. **Section 8. Limitation on action.** A government order, regulation, or guidance related to covid-19 or another communicable disease may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or guidance.

NEW SECTION. **Section 9. Limitation on requirements.** (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 or another communicable disease recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 or another communicable disease to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 or another communicable disease recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 or

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another communicable disease recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section 10. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 or another communicable disease as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 or another communicable disease as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

SECTION 11. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section ~~3~~ 4], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

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(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through ~~6~~ ~~8~~ 9] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through ~~6~~ ~~8~~ 9].

NEW SECTION. **Section 13. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 14. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 15. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 16. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to claims made on or after January 1, 2021.

NEW SECTION. **Section 17. Termination.** [This act] terminates January 1, 2031.

- END -

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Amendments to Senate Bill No. 65
2nd Reading Copy

Requested by Brad Molnar
For the (S) Committee of the Whole

Prepared by Sonja Nowakowski
01/16/2021, 11:44:57

1. Title, line 5.
Following: "COVID-19"
Insert: "OR ANOTHER COMMUNICABLE DISEASE"

2. Title, line 7.
Following: "REGULATIONS;"
Insert: "PROVIDING FOR STANDING;"

3. Title, line 8.
Following: "COVID-19"
Insert: "OR ANOTHER COMMUNICABLE DISEASE"

4. Title, line 8.
Strike: "SECTION"
Insert: "SECTIONS"

5. Title, line 8.
Following: "27-1-719"
Insert: "AND 70-24-303"

6. Page 1, line 16.
Following: "COVID-19"
Insert: "and other communicable diseases"

7. Page 1, line 20.
Strike: "8"
Insert: "9"

8. Page 1.
Following: line 21
Insert: "(1) "Communicable disease" means an illness resulting from a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission can occur either directly or indirectly."
Renumber: subsequent subsections

9. Page 1, line 25.
Strike: "8"
Insert: "9"

10. Page 2, line 7.
Strike: "8"
Insert: "9"

11. Page 2, line 22.
Following: "covid-19"
Insert: "or another communicable disease"

12. Page 3, line 5.
Following: "covid-19"
Insert: "or another communicable disease"

13. Page 3, line 6.
Following: "covid-19"
Insert: "or another communicable disease"

14. Page 3, line 7.
Following: "covid-19"
Insert: "or another communicable disease"

15. Page 3, line 8.
Following: "covid-19"
Insert: "or another communicable disease"

16. Page 3, line 9.
Following: "covid-19"
Insert: "or another communicable disease"

17. Page 3, line 10.
Following: "covid-19"
Insert: "or another communicable disease"

18. Page 3, line 11.
Following: "covid-19"
Insert: "or another communicable disease"

19. Page 3, line 12.
Following: "covid-19"
Insert: "or another communicable disease"

20. Page 3, line 13.
Following: "covid-19"
Insert: "or another communicable disease"

21. Page 3, line 14.
Following: "covid-19"
Insert: "or another communicable disease"

22. Page 3, line 15.
Strike: "(8)(A) THROUGH (8)(E)"
Insert: "(9)(a) through (9)(e)"

23. Page 3, line 18.
Strike: "8"
Insert: "9"

24. Page 3, line 18.
Following: "covid-19"
Insert: "or another communicable disease"

25. Page 3.
Following: line 22
Insert: "NEW SECTION. **Section 3. Standing.** (1) A civil action in accordance with [sections 1 through 9]

may be initiated only by a person who:

(a) demonstrates concrete adverseness and individual harm;

(b) subject to subsection (2), provides evidence of exposure or potential exposure to covid-19 or another communicable disease on a date and at a time and place certain; and

(c) offers evidence that the person could not take an alternative action to avoid the exposure or potential exposure.

(2) If a person is unable to meet the requirements of subsection (1)(b):

(a) the defendant may move for, and the judge may grant, summary judgment on one or more of the issues raised by the civil action; and

(b) the person bringing the civil action is responsible for all legal fees. "

Renumber: subsequent sections

26. Page 3, line 27.
Following: "covid-19"
Insert: "or another communicable disease"

27. Page 4, line 8.
Following: "COVID-19"
Insert: "or another communicable disease"

28. Page 4, line 20.
Following: "covid-19"
Insert: "or another communicable disease"

29. Page 4, line 24.
Following: "covid-19"
Insert: "or another communicable disease"

30. Page 4, line 26.
Following: "covid-19"
Insert: "or another communicable disease"

31. Page 4, line 27.
Following: "covid-19"
Insert: "or another communicable disease"

32. Page 4, line 28.
Following: "covid-19"
Insert: "or another communicable disease"

33. Page 5, line 11.
Following: "covid-19"
Insert: "or another communicable disease"

34. Page 5, line 13.
Following: "covid-19"

Insert: "or another communicable disease"

35. Page 5, line 18.
Following: "**covid-19**"
Insert: "**or another communicable disease**"

36. Page 5, line 20.
Following: "covid-19"
Insert: "or another communicable disease"

37. Page 5, line 26.
Following: "covid-19"
Insert: "or another communicable disease"

38. Page 6, line 4.
Following: "covid-19"
Insert: "or another communicable disease"

39. Page 6, line 9.
Following: "covid-19"
Insert: "or another communicable disease"

40. Page 6, line 14.
Following: "covid-19"
Insert: "or another communicable disease"

41. Page 6, line 16.
Following: "covid-19"
Insert: "or another communicable disease"

42. Page 6, line 19.
Following: "covid-19"
Insert: "or another communicable disease"

43. Page 6, line 23.
Following: "covid-19"
Insert: "or another communicable disease"

44. Page 6, line 24.
Following: "covid-19"
Insert: "or another communicable disease"

45. Page 6, line 26.
Following: "covid-19"
Insert: "or another communicable disease"

46. Page 7, line 2.
Following: "covid-19"
Insert: "or another communicable disease"

47. Page 7, line 20.
Following: "covid-19"
Insert: "or another communicable disease"

48. Page 8, line 20.
Following: "covid-19"
Insert: "or another communicable disease"

49. Page 9, line 10.
Strike: "3"
Insert: "4"

50. Page 10, line 27.
Strike: "8"
Insert: "9"

51. Page 10, line 28.
Strike: "8"
Insert: "9"

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING ~~SAFE HARBOR~~ AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; ~~AND~~ AMENDING SECTION 27-1-719, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through ~~6~~ 8], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], physicians, PHYSICIAN ASSISTANTS, NURSE PRACTITIONERS, NURSES, NURSING ASSISTANTS, CHIROPRACTORS, PHARMACISTS, PHARMACY TECHNICIANS, DENTISTS, DENTAL HYGIENISTS, MEDICATION AIDES, RESPIRATORY THERAPIST PRACTITIONERS, PROFESSIONAL COUNSELORS, OCCUPATIONAL THERAPISTS, MIDWIFES, PSYCHOLOGISTS, and other

health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

~~(3) "Minimummedical condition" means an inpatient hospitalization or deathwhere the primary cause of the inpatient hospitalization or death is covid-19.~~

(3) "HEALTH CARE PROVIDER" MEANS AND INCLUDES, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], A HEALTH CARE PROFESSIONAL, HEALTH CARE FACILITY, HOME HEALTH CARE FACILITY, AND ANY OTHER PERSON OR FACILITY OTHERWISE AUTHORIZED OR PERMITTED BY ANY FEDERAL OR STATE STATUTE, REGULATION, ORDER, OR PUBLIC HEALTH GUIDANCE TO ADMINISTER HEALTH CARE SERVICES OR TREATMENT. IT DOES NOT INCLUDE A GOVERNMENT ENTITY OR A HEALTH CARE PROFESSIONAL THAT IS EMPLOYED BY A GOVERNMENT ENTITY.

(4) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, NONPROFIT CORPORATION, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS OR SIMILAR TRUST, ASSOCIATION, JOINT VENTURE, PLACE OF WORSHIP, PERSONAL REPRESENTATIVE, TRUSTEE, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY. IT DOES NOT INCLUDE A GOVERNMENT ENTITY.

~~(4)~~ (5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

~~(5)~~ (6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

~~(6)~~ (7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of health.

~~(7)~~ (8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections ~~(7)(a) through (7)(e)~~ (8)(A) THROUGH (8)(E).

NEW SECTION. **Section 2. ~~Actual injury~~ LIABILITY.** ~~A~~ EXCEPT AS PROVIDED IN [SECTIONS 3 THROUGH 8], A person may not bring or maintain a civil action alleging exposure or potential exposure to covid-19 unless~~:~~

~~(1) the civil action relates to a minimum medical condition;~~

~~(2) the civil action involves an act that was intended to cause harm; or~~

~~(3)~~ the civil action involves an act OR OMISSION that constitutes gross negligence, ~~or~~ willful and wanton misconduct, OR INTENTIONAL TORT.

NEW SECTION. **Section 3. Premises owner's duty of care -- limited liability.** (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, ~~shall not be~~ IS NOT liable for civil damages for injuries sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless ~~one or both~~of the following

~~apply to the person who possesses or is in control of the premises:~~

~~(1) the person who possesses or is in control of the premises exposes the individual to covid-19 through an act of gross negligenceor willful and wanton misconduct; or~~

~~(2) the person who possesses or is in control of the premises intentionally exposes the individual to covid-19~~ THE CIVIL ACTION INVOLVES AN ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL AND WANTON MISCONDUCT, OR INTENTIONAL TORT.

(2) THE STANDARD ESTABLISHED IN SUBSECTION (1) APPLIES IN LANDLORD-TENANT CLAIMS MADE UNDER 70-24-303(1)(B) THROUGH (1)(E) FOR INJURIES SUSTAINED FROM AN INDIVIDUAL'S EXPOSURE TO COVID-19.

~~NEW SECTION.~~ **~~Section 4.~~ ~~Safe harbor for compliance with regulations, executive orders, or public health guidance.**~~ ~~A person shall not be held liable for civil damages for injuries sustained from an alleged exposure or potential exposure to covid-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent withafederal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.~~

NEW SECTION. **Section ~~5~~ 4. Liability of health care providers.** A health care provider ~~shall not be~~ IS NOT liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the ~~state's~~ response to covid-19 unless the health care provider caused the death or injury of an individual through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort. This ~~subsection~~ SECTION applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the ~~state's~~ response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

NEW SECTION. **Section ~~6~~ 5. Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to covid-19.** (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through ~~an act of~~ AN ACT OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death,

or property damage through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

NEW SECTION. **Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

NEW SECTION. **Section 7. Limitation on action.** A government order, regulation, or guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or guidance.

NEW SECTION. **Section 8. Limitation on requirements.** (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature

check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section ~~10~~ 9. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious

and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious

and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

SECTION ~~11~~ 10. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an

installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

NEW SECTION. **Section ~~12~~ 11. Codification instruction.** [Sections 1 through ~~6~~ 8] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through ~~6~~ 8].

NEW SECTION. **Section ~~13~~ 12. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 13. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 15. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to claims made on or after January 1, 2021.

NEW SECTION. **Section 16. Termination.** [This act] terminates ~~January 1, 2031~~ June 30, 2023.

- END -

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Amendments to Senate Bill No. 65
2nd Reading Copy

Requested by Jill Cohenour
For the (S) Committee of the Whole

Prepared by Joe Carroll
01/18/2021, 09:00:08

1. Page 11, line 15.
Strike: "January 1, 2031"
Insert: "June 30, 2023"

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING ~~SAFE HARBOR~~ AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; PROVIDING FOR STANDING; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; ~~AND~~ AMENDING ~~SECTION~~ SECTIONS 27-1-719 AND 70-24-303, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through ~~6~~ ~~89~~], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, FOR THE PURPOSES OF [SECTIONS 1 THROUGH ~~8~~9], physicians, PHYSICIAN ASSISTANTS, NURSE PRACTITIONERS, NURSES, NURSING ASSISTANTS, CHIROPRACTORS, PHARMACISTS, PHARMACY TECHNICIANS, DENTISTS, DENTAL HYGIENISTS, MEDICATION AIDES, RESPIRATORY THERAPIST

PRACTITIONERS, PROFESSIONAL COUNSELORS, OCCUPATIONAL THERAPISTS, MIDWIFES, PSYCHOLOGISTS, and other health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

~~(3) "Minimummedical condition" means an inpatient hospitalization or deathwhere the primary cause of the inpatient hospitalization or death is covid-19.~~

(3) "HEALTH CARE PROVIDER" MEANS AND INCLUDES, FOR THE PURPOSES OF [SECTIONS 1 THROUGH ~~8~~9], A HEALTH CARE PROFESSIONAL, HEALTH CARE FACILITY, HOME HEALTH CARE FACILITY, AND ANY OTHER PERSON OR FACILITY OTHERWISE AUTHORIZED OR PERMITTED BY ANY FEDERAL OR STATE STATUTE, REGULATION, ORDER, OR PUBLIC HEALTH GUIDANCE TO ADMINISTER HEALTH CARE SERVICES OR TREATMENT. IT DOES NOT INCLUDE A GOVERNMENT ENTITY OR A HEALTH CARE PROFESSIONAL THAT IS EMPLOYED BY A GOVERNMENT ENTITY.

(4) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, NONPROFIT CORPORATION, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS OR SIMILAR TRUST, ASSOCIATION, JOINT VENTURE, PLACE OF WORSHIP, PERSONAL REPRESENTATIVE, TRUSTEE, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY. IT DOES NOT INCLUDE A GOVERNMENT ENTITY.

~~(4)~~ (5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

~~(5)~~ (6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

~~(6)~~ (7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of health.

~~(7)~~ (8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections ~~(7)(a) through (7)(e)~~ (8)(A) THROUGH (8)(E).

NEW SECTION. **Section 2. ~~Actual injury~~ LIABILITY.** ~~A~~ EXCEPT AS PROVIDED IN [SECTIONS 3 THROUGH ~~8~~9], A person may not bring or maintain a civil action alleging exposure or potential exposure to covid-19 unless~~:~~

~~(1) the civil action relates to a minimum medical condition;~~

~~(2) the civil action involves an act that was intended to cause harm; or~~

~~(3)~~ the civil action involves an act OR OMISSION that constitutes gross negligence, ~~or~~ willful and wanton misconduct, OR INTENTIONAL TORT.

NEW SECTION. **Section 3. Standing.** (1) A civil action in accordance with [sections 1 through 9] may be initiated only by a person who:

(a) demonstrates concrete adverseness and individual harm;

(b) subject to subsection (2), provides evidence of exposure or potential exposure to covid-19 or another communicable disease on a date and at a time and place certain; and

(c) offers evidence that the person could not take an alternative action to avoid the exposure or potential exposure.

(2) If a person is unable to meet the requirements of subsection (1)(b):

(a) the defendant may move for, and the judge may grant, summary judgment on one or more of the issues raised by the civil action; and

(b) the person bringing the civil action is responsible for all legal fees.

NEW SECTION. **Section 4. Premises owner's duty of care -- limited liability.** (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, ~~shall not be~~ IS NOT liable for civil damages for injuries sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless ~~one or bothof the following apply to the person who possesses or is in control of the premises:~~

~~(1) the person who possesses or is in control of the premises exposes the individual to covid-19 through an act of gross negligenceor willful and wanton misconduct; or~~

~~(2) the person who possesses or is in control of the premises intentionally exposes the individual to covid-19~~ THE CIVIL ACTION INVOLVES AN ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL AND WANTON MISCONDUCT, OR INTENTIONAL TORT.

(2) THE STANDARD ESTABLISHED IN SUBSECTION (1) APPLIES IN LANDLORD-TENANT CLAIMS MADE UNDER 70-24-303(1)(B) THROUGH (1)(E) FOR INJURIES SUSTAINED FROM AN INDIVIDUAL'S EXPOSURE TO COVID-19.

~~NEW SECTION.~~**~~Section 5.Safe harbor for compliance with regulations, executive orders, or public health guidance.~~**~~A person shall not be held liable for civil damages for injuries sustained from an alleged exposure or potential exposure to covid-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent withafederal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged~~

~~exposure or potential exposure.~~

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(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the ~~state's~~ response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal

protective equipment.

NEW SECTION. **Section 6. Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to covid-19.** (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through ~~an act of~~ AN ACT OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or property damage through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

NEW SECTION. **Section 7. Affirmative defense -- reasonable measures consistent with regulations, orders, and guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

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(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

NEW SECTION. **Section 8. Limitation on action.** A government order, regulation, or guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or guidance.

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(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section 10. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

SECTION 11. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section ~~34~~], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that

creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance

tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through ~~6~~ ~~89~~] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through ~~6~~ ~~89~~].

NEW SECTION. **Section 13. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 14. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 15. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 16. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to claims made on or after January 1, 2021.

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NEW SECTION. **Section 17. Termination.** [This act] terminates January 1, 2031.

- END -

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Amendments to Senate Bill No. 65
2nd Reading Copy

Requested by Brad Molnar
For the (S) Committee of the Whole

Prepared by Sonja Nowakowski
01/18/2021, 12:28:55

1. Title, line 7.
Following: "REGULATIONS;"
Insert: "PROVIDING FOR STANDING;"

2. Title, line 8.
Strike: "SECTION"
Insert: "SECTIONS"

3. Title, line 8.
Following: "27-1-719"
Insert: "AND 70-24-303"

4. Page 1, line 20.
Strike: "8"
Insert: "9"

5. Page 1, line 25.
Strike: "8"
Insert: "9"

6. Page 2, line 7.
Strike: "8"
Insert: "9"

7. Page 3, line 18.
Strike: "8"
Insert: "9"

8. Page 3.
Following: line 22
Insert: "NEW SECTION. **Section 3. Standing.** (1) A civil action in accordance with [sections 1 through 9] may be initiated only by a person who:

(a) demonstrates concrete adverseness and individual harm;

(b) subject to subsection (2), provides evidence of exposure or potential exposure to covid-19 or another communicable disease on a date and at a time and place certain; and

(c) offers evidence that the person could not take an alternative action to avoid the exposure or potential exposure.

(2) If a person is unable to meet the requirements of subsection (1)(b):

(a) the defendant may move for, and the judge may grant, summary judgment on one or more of the

issues raised by the civil action; and

(b) the person bringing the civil action is responsible for all legal fees."

Renumber: subsequent sections

9. Page 9, line 10.
Strike: "3"
Insert: "4"

10. Page 10, line 27.
Strike: "8"
Insert: "9"

11. Page 10, line 28.
Strike: "8"
Insert: "9"

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING ~~SAFE HARBOR~~ AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; ~~AND~~ AMENDING SECTION 27-1-719, MCA; AND PROVIDING AN EFFECTIVE DATE~~, AN APPLICABILITY DATE,~~ AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through ~~6~~ 8], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], physicians, PHYSICIAN ASSISTANTS, NURSE PRACTITIONERS, NURSES, NURSING ASSISTANTS, CHIROPRACTORS, PHARMACISTS, PHARMACY TECHNICIANS, DENTISTS, DENTAL HYGIENISTS, optometrists, MEDICATION AIDES, RESPIRATORY THERAPIST PRACTITIONERS, PROFESSIONAL COUNSELORS, OCCUPATIONAL THERAPISTS, MIDWIFES, PSYCHOLOGISTS, and other

health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

~~(3) "Minimummedical condition" means an inpatient hospitalization or deathwhere the primary cause of the inpatient hospitalization or death is covid-19.~~

(3) "HEALTH CARE PROVIDER" MEANS AND INCLUDES, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], A HEALTH CARE PROFESSIONAL, HEALTH CARE FACILITY, HOME HEALTH CARE FACILITY, assisted living facility, AND ANY OTHER PERSON OR FACILITY OTHERWISE AUTHORIZED OR PERMITTED BY ANY FEDERAL OR STATE STATUTE, REGULATION, ORDER, OR PUBLIC HEALTH GUIDANCE TO ADMINISTER HEALTH CARE SERVICES OR TREATMENT. IT DOES NOT INCLUDE A GOVERNMENT ENTITY OR A HEALTH CARE PROFESSIONAL THAT IS EMPLOYED BY A GOVERNMENT ENTITY.

(4) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, NONPROFIT CORPORATION, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS OR SIMILAR TRUST, ASSOCIATION, JOINT VENTURE, PLACE OF WORSHIP, PERSONAL REPRESENTATIVE, TRUSTEE, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY. IT DOES NOT INCLUDE A GOVERNMENT ENTITY.

~~(4)~~ (5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

~~(5)~~ (6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

~~(6)~~ (7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of health.

~~(7)~~ (8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections ~~(7)(a) through (7)(e)~~ (8)(A) THROUGH (8)(E).

NEW SECTION. **Section 2. ~~Actual injury~~ LIABILITY.** ~~A~~ EXCEPT AS PROVIDED IN [SECTIONS 3 THROUGH 8], A person ~~may not bring or maintain a civil action alleging exposure or potential exposure~~ is not liable for civil damages for injuries or death from or relating to exposure or potential exposure to covid-19 unless~~:~~

~~(1) the civil action relates to a minimum medical condition;~~

~~(2) the civil action involves an act that was intended to cause harm; or~~

~~(3)~~ the civil action involves an act OR OMISSION that constitutes gross negligence, ~~or~~ willful and wanton misconduct, OR INTENTIONAL TORT.

NEW SECTION. **Section 3. Premises owner's duty of care -- limited liability.** (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, ~~shall not be~~ IS NOT liable for civil damages for injuries or death sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or

during an activity managed by the person who possesses or is in control of a premises, unless ~~one or bothof the following apply to the person who possesses or is in control of the premises:~~

~~(1) the person who possesses or is in control of the premises exposes the individual to covid-19 through an act of gross negligenceor willful and wanton misconduct; or~~

~~(2) the person who possesses or is in control of the premises intentionally exposes the individual to covid-19~~ THE CIVIL ACTION INVOLVES AN ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL AND WANTON MISCONDUCT, OR INTENTIONAL TORT.

(2) THE STANDARD ESTABLISHED IN SUBSECTION (1) APPLIES IN LANDLORD-TENANT CLAIMS MADE UNDER 70-24-303(1)(B) THROUGH (1)(E) FOR INJURIES or death SUSTAINED FROM AN INDIVIDUAL'S EXPOSURE TO COVID-19.

NEW SECTION.~~**Section 4. Safe harbor for compliance with regulations, executive orders, or public health guidance.**A person shall not be held liable for civil damages for injuries sustained from an alleged exposure or potential exposure to covid-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent withafederal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.~~

NEW SECTION. **Section ~~5~~ 4. Liability of health care providers.** A health care provider ~~shall not be~~ IS NOT liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the ~~state's~~ response to covid-19 unless the health care provider caused the death or injury of an individual through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort. This ~~subsection~~ SECTION applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19

when those acts or omissions support the ~~state's~~ response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

NEW SECTION. **Section ~~6~~ 5. Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to covid-19.** (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through ~~an act of~~ AN ACT OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a

failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or property damage through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

NEW SECTION. **Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and public health guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury, death, or property damage.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of public health guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

NEW SECTION. **Section 7. Limitation on action.** A government order, regulation, or public health guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or public health guidance.

NEW SECTION. **Section 8. Limitation on requirements.** (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before

allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section ~~10~~ 9. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

SECTION ~~11~~ 10. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be

equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

NEW SECTION. **Section ~~12~~ 11. Codification instruction.** [Sections 1 through ~~6~~ 8] are intended to

be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through ~~6~~ 8].

NEW SECTION. **Section ~~13~~ 12. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 13. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on passage and approval.

~~NEW SECTION. **Section 15. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to claims made on or after January 1, 2021.~~

NEW SECTION. **Section ~~16~~15. Termination.** [This act] terminates January 1, 2031.

- END -

DRAFT

Amendments to Senate Bill No. 65
3rd Reading Copy

Requested by Steve Fitzpatrick
For the (H) Business and Labor

Prepared by Sonja Nowakowski
01/21/2021, 07:52:36

1. Title, line 9.
Following: the first "DATE"
Strike: ", AN APPLICABILITY DATE,"

2. Page 1, line 27.
Following: "HYGIENISTS,"
Insert: "optometrists,"

3. Page 2, line 8.
Following: the second "FACILITY,"
Insert: "assisted living facility,"

4. Page 3, line 18.
Strike: "may not bring or maintain a civil action alleging exposure or potential exposure"
Insert: "is not liable for civil damages for injuries or death from or relating to exposure or potential exposure"

5. Page 3, line 27.
Following: line 26
Insert: "or death"

6. Page 4, line 8.
Following: "INJURIES"
Insert: "or death"

7. Page 6, line 7.
Following: "**and**"
Insert: "**public health**"

8. Page 6, line 10.
Following: "injury"
Insert: ", death, or property damage"

9. Page 6, line 12.
Following: the second "of"
Insert: "public health"

10. Page 6, line 18.
Following: "or"
Insert: "public health"

11. Page 6, line 20.
Following: "or"
Insert: "public health"

12. Page 11, line 12 through line 13.
Strike: section 15 in its entirety

Renumber: subsequent sections

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING ~~SAFE HARBOR~~ AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; ~~AND~~ AMENDING SECTION 27-1-719, MCA; AND PROVIDING AN EFFECTIVE DATE~~,~~ ~~AN APPLICABILITY DATE,~~ AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through ~~6~~ 8], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], physicians, PHYSICIAN ASSISTANTS, NURSE PRACTITIONERS, NURSES, NURSING ASSISTANTS, CHIROPRACTORS, PHARMACISTS, PHARMACY TECHNICIANS, DENTISTS, DENTAL HYGIENISTS, OPTOMETRISTS, MEDICATION AIDES, RESPIRATORY THERAPIST PRACTITIONERS, PROFESSIONAL COUNSELORS, OCCUPATIONAL THERAPISTS, MIDWIFES, PSYCHOLOGISTS, and other

health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

~~(3) "Minimummedical condition" means an inpatient hospitalization or deathwhere the primary cause of the inpatient hospitalization or death is covid-19.~~

(3) "HEALTH CARE PROVIDER" MEANS AND INCLUDES, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], A HEALTH CARE PROFESSIONAL, HEALTH CARE FACILITY, HOME HEALTH CARE FACILITY, ASSISTED LIVING FACILITY, AND ANY OTHER PERSON OR FACILITY OTHERWISE AUTHORIZED OR PERMITTED BY ANY FEDERAL OR STATE STATUTE, REGULATION, ORDER, OR PUBLIC HEALTH GUIDANCE TO ADMINISTER HEALTH CARE SERVICES OR TREATMENT. IT DOES NOT INCLUDE A GOVERNMENT ENTITY OR A HEALTH CARE PROFESSIONAL THAT IS EMPLOYED BY A GOVERNMENT ENTITY.

(4) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, NONPROFIT CORPORATION, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS OR SIMILAR TRUST, ASSOCIATION, JOINT VENTURE, PLACE OF WORSHIP, PERSONAL REPRESENTATIVE, TRUSTEE, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY. IT DOES NOT INCLUDE A GOVERNMENT ENTITY.

~~(4)~~ (5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

~~(5)~~ (6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

~~(6)~~ (7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of health.

~~(7)~~ (8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections ~~(7)(a) through (7)(e)~~ (8)(A) THROUGH (8)(E).

NEW SECTION. **Section 2. ~~Actual injury~~ LIABILITY.** ~~A~~ EXCEPT AS PROVIDED IN [SECTIONS 3 THROUGH 8], A person ~~may not bring or maintain a civil action alleging exposure or potential exposure~~ IS NOT LIABLE FOR CIVIL DAMAGES FOR INJURIES OR DEATH FROM OR RELATING TO EXPOSURE OR POTENTIAL EXPOSURE to covid-19 unless~~:~~

~~(1) the civil action relates to a minimum medical condition;~~

~~(2) the civil action involves an act that was intended to cause harm; or~~

~~(3)~~ the civil action involves an act OR OMISSION that constitutes gross negligence, ~~or~~ willful and wanton misconduct, OR INTENTIONAL TORT.

NEW SECTION. **Section 3. Premises owner's duty of care -- limited liability.** (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, ~~shall not be~~ IS NOT liable for civil damages for injuries

OR DEATH sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless ~~one or bothof the following apply to the person who possesses or is in control of the premises:~~

~~(1) the person who possesses or is in control of the premises exposes the individual to covid-19 through an act of gross negligenceor willful and wanton misconduct; or~~

~~(2) the person who possesses or is in control of the premises intentionally exposes the individual to covid-19~~ THE CIVIL ACTION INVOLVES AN ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL AND WANTON MISCONDUCT, OR INTENTIONAL TORT.

(2) THE STANDARD ESTABLISHED IN SUBSECTION (1) APPLIES IN LANDLORD-TENANT CLAIMS MADE UNDER 70-24-303(1)(B) THROUGH (1)(E) FOR INJURIES OR DEATH SUSTAINED FROM AN INDIVIDUAL'S EXPOSURE TO COVID-19.

NEW SECTION.~~**Section 4. Safe harbor for compliance with regulations, executive orders, or public health guidance.**A person shall not be held liable for civil damages for injuries sustained from an alleged exposure or potential exposure to covid-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent withafederal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.~~

NEW SECTION. **Section ~~5~~ 4. Liability of health care providers.** A health care provider ~~shall not be~~ IS NOT liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the ~~state's~~ response to covid-19 unless the health care provider caused the death or injury of an individual through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort. This ~~subsection~~ SECTION applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the ~~state's~~ response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

NEW SECTION. **Section ~~6~~ 5. Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to covid-19.** (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through ~~an act of~~ AN ACT OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~

IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or property damage through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

NEW SECTION. **Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and PUBLIC HEALTH guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury, DEATH, OR PROPERTY DAMAGE.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of PUBLIC HEALTH guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action alleging negligence relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

NEW SECTION. **Section 7. Limitation on action.** A government order, regulation, or PUBLIC HEALTH guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or PUBLIC HEALTH guidance.

NEW SECTION. **Section 8. Limitation on requirements.** (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

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(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section ~~10~~ 9. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured

product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses

against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

SECTION ~~11~~ 10. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

NEW SECTION. **Section ~~12~~ 11. Codification instruction.** [Sections 1 through ~~6~~ 8] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through ~~6~~ 8].

NEW SECTION. **Section ~~13~~ 12. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 13. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on passage and approval.

~~NEW SECTION.~~**~~Section 15. Retroactive applicability.~~**~~[This act] applies retroactively, within the meaning of 1-2-109, to claims made on or after January 1, 2021.~~

NEW SECTION. **Section ~~16~~ 15. Termination.** [This act] terminates January 1, 2031.

- END -

DRAFT

Amendments to Senate Bill No. 65
2nd Reading/2nd House Copy

Requested by Andrea Olsen
For the (H) Committee of the Whole

Prepared by Jameson Walker
01/27/2021, 07:16:40

1. Page 6, line 16.
Following: "action"
Insert: "alleging negligence"

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING ~~SAFE HARBOR~~ AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; ~~AND~~ AMENDING SECTION 27-1-719, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through ~~6~~ 8], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], physicians, PHYSICIAN ASSISTANTS, NURSE PRACTITIONERS, NURSES, NURSING ASSISTANTS, CHIROPRACTORS, PHARMACISTS, PHARMACY TECHNICIANS, DENTISTS, DENTAL HYGIENISTS, MEDICATION AIDES, RESPIRATORY THERAPIST PRACTITIONERS, PROFESSIONAL COUNSELORS, OCCUPATIONAL THERAPISTS, MIDWIFES, PSYCHOLOGISTS, and other

health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

~~(3) "Minimummedical condition" means an inpatient hospitalization or deathwhere the primary cause of the inpatient hospitalization or death is covid-19.~~

(3) "HEALTH CARE PROVIDER" MEANS AND INCLUDES, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], A HEALTH CARE PROFESSIONAL, HEALTH CARE FACILITY, HOME HEALTH CARE FACILITY, AND ANY OTHER PERSON OR FACILITY OTHERWISE AUTHORIZED OR PERMITTED BY ANY FEDERAL OR STATE STATUTE, REGULATION, ORDER, OR PUBLIC HEALTH GUIDANCE TO ADMINISTER HEALTH CARE SERVICES OR TREATMENT. IT DOES NOT INCLUDE A GOVERNMENT ENTITY OR A HEALTH CARE PROFESSIONAL THAT IS EMPLOYED BY A GOVERNMENT ENTITY.

(4) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, NONPROFIT CORPORATION, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS OR SIMILAR TRUST, ASSOCIATION, JOINT VENTURE, PLACE OF WORSHIP, PERSONAL REPRESENTATIVE, TRUSTEE, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY. IT DOES NOT INCLUDE A GOVERNMENT ENTITY.

~~(4)~~ (5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

~~(5)~~ (6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

~~(6)~~ (7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of health.

~~(7)~~ (8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections ~~(7)(a) through (7)(e)~~ (8)(A) THROUGH (8)(E).

NEW SECTION. **Section 2. ~~Actual injury~~ LIABILITY.** ~~A~~ EXCEPT AS PROVIDED IN [SECTIONS 3 THROUGH 8], A person may not bring or maintain a civil action alleging exposure or potential exposure to covid-19 unless~~:~~

~~(1) the civil action relates to a minimum medical condition;~~

~~(2) the civil action involves an act that was intended to cause harm; or~~

~~(3)~~ the civil action involves an act OR OMISSION that constitutes gross negligence, ~~or~~ willful and wanton misconduct, OR INTENTIONAL TORT.

NEW SECTION. **Section 3. Premises owner's duty of care -- limited liability.** (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, ~~shall not be~~ IS NOT liable for civil damages for injuries sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless ~~one or both~~of the following

~~apply to the person who possesses or is in control of the premises:~~

~~(1) the person who possesses or is in control of the premises exposes the individual to covid-19 through an act of gross negligenceor willful and wanton misconduct; or~~

~~(2) the person who possesses or is in control of the premises intentionally exposes the individual to covid-19~~ THE CIVIL ACTION INVOLVES AN ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL AND WANTON MISCONDUCT, OR INTENTIONAL TORT.

(2) THE STANDARD ESTABLISHED IN SUBSECTION (1) APPLIES IN LANDLORD-TENANT CLAIMS MADE UNDER 70-24-303(1)(B) THROUGH (1)(E) FOR INJURIES SUSTAINED FROM AN INDIVIDUAL'S EXPOSURE TO COVID-19.

~~NEW SECTION.~~**~~Section 4. Safe harbor for compliance with regulations, executive orders, or public health guidance.~~**~~A person shall not be held liable for civil damages for injuries sustained from an alleged exposure or potential exposure to covid-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent withafederal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.~~

NEW SECTION. **Section ~~5~~ 4. Liability of health care providers.** A health care provider ~~shall not be~~ IS NOT liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the ~~state's~~ response to covid-19 unless the health care provider caused the death or injury of an individual through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort. This ~~subsection~~ SECTION applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the ~~state's~~ response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

NEW SECTION. **Section ~~6~~ 5. Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to covid-19.** (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through ~~an act of~~ AN ACT OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death,

or property damage through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

NEW SECTION. **Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

NEW SECTION. **Section 7. Limitation on action.** A government order, regulation, or guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or guidance.

NEW SECTION. **Section 8. Limitation on requirements.** (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature

check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section ~~10~~ 9. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious

and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious

and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

SECTION ~~11~~ 10. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an

installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

NEW SECTION. **Section ~~12~~ 11. Codification instruction.** [Sections 1 through ~~6~~ 8] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through ~~6~~ 8].

NEW SECTION. **Section ~~13~~ 12. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 13. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 15. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to claims made on or after January 1, 2021.

NEW SECTION. **Section 16. Termination.** [This act] terminates January 1, 2031.

- END -

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING ~~SAFE HARBOR~~ AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; ~~AND~~ AMENDING SECTION 27-1-719, MCA; AND PROVIDING AN EFFECTIVE DATE~~,~~ ~~AN APPLICABILITY DATE,~~ AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through ~~6~~ 8], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], physicians, PHYSICIAN ASSISTANTS, NURSE PRACTITIONERS, NURSES, NURSING ASSISTANTS, CHIROPRACTORS, PHARMACISTS, PHARMACY TECHNICIANS, DENTISTS, DENTAL HYGIENISTS, OPTOMETRISTS, MEDICATION AIDES, RESPIRATORY THERAPIST PRACTITIONERS, PROFESSIONAL COUNSELORS, OCCUPATIONAL THERAPISTS, MIDWIFES, PSYCHOLOGISTS, and other

health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

~~(3) "Minimummedical condition" means an inpatient hospitalization or deathwhere the primary cause of the inpatient hospitalization or death is covid-19.~~

(3) "HEALTH CARE PROVIDER" MEANS AND INCLUDES, FOR THE PURPOSES OF [SECTIONS 1 THROUGH 8], A HEALTH CARE PROFESSIONAL, HEALTH CARE FACILITY, HOME HEALTH CARE FACILITY, ASSISTED LIVING FACILITY, AND ANY OTHER PERSON OR FACILITY OTHERWISE AUTHORIZED OR PERMITTED BY ANY FEDERAL OR STATE STATUTE, REGULATION, ORDER, OR PUBLIC HEALTH GUIDANCE TO ADMINISTER HEALTH CARE SERVICES OR TREATMENT. IT DOES NOT INCLUDE A GOVERNMENT ENTITY OR A HEALTH CARE PROFESSIONAL THAT IS EMPLOYED BY A GOVERNMENT ENTITY.

(4) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, NONPROFIT CORPORATION, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS OR SIMILAR TRUST, ASSOCIATION, JOINT VENTURE, PLACE OF WORSHIP, PERSONAL REPRESENTATIVE, TRUSTEE, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY. IT DOES NOT INCLUDE A GOVERNMENT ENTITY.

~~(4)~~ (5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

~~(5)~~ (6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

~~(6)~~ (7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of health.

~~(7)~~ (8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections ~~(7)(a) through (7)(e)~~ (8)(A) THROUGH (8)(E).

NEW SECTION. **Section 2. ~~Actual injury~~ LIABILITY.** ~~A~~ EXCEPT AS PROVIDED IN [SECTIONS 3 THROUGH 8], A person ~~may not bring or maintain a civil action alleging exposure or potential exposure~~ IS NOT LIABLE FOR CIVIL DAMAGES FOR INJURIES OR DEATH FROM OR RELATING TO EXPOSURE OR POTENTIAL EXPOSURE to covid-19 unless~~:~~

~~(1) the civil action relates to a minimum medical condition;~~

~~(2) the civil action involves an act that was intended to cause harm; or~~

~~(3)~~ the civil action involves an act OR OMISSION that constitutes gross negligence, ~~or~~ willful and wanton misconduct, OR INTENTIONAL TORT.

NEW SECTION. **Section 3. Premises owner's duty of care -- limited liability.** (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, ~~shall not be~~ IS NOT liable for civil damages for injuries

OR DEATH sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless ~~one or bothof the following apply to the person who possesses or is in control of the premises:~~

~~(1) the person who possesses or is in control of the premises exposes the individual to covid-19 through an act of gross negligenceor willful and wanton misconduct; or~~

~~(2) the person who possesses or is in control of the premises intentionally exposes the individual to covid-19~~ THE CIVIL ACTION INVOLVES AN ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL AND WANTON MISCONDUCT, OR INTENTIONAL TORT.

(2) THE STANDARD ESTABLISHED IN SUBSECTION (1) APPLIES IN LANDLORD-TENANT CLAIMS MADE UNDER 70-24-303(1)(B) THROUGH (1)(E) FOR INJURIES OR DEATH SUSTAINED FROM AN INDIVIDUAL'S EXPOSURE TO COVID-19.

NEW SECTION.~~**Section 4. Safe harbor for compliance with regulations, executive orders, or public health guidance.**A person shall not be held liable for civil damages for injuries sustained from an alleged exposure or potential exposure to covid-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent withafederal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.~~

NEW SECTION. **Section ~~5~~ 4. Liability of health care providers.** A health care provider ~~shall not be~~ IS NOT liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the ~~state's~~ response to covid-19 unless the health care provider caused the death or injury of an individual through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort. This ~~subsection~~ SECTION applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the ~~state's~~ response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

NEW SECTION. **Section ~~6~~ 5. Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to covid-19.** (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~ IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through ~~an act of~~ AN ACT OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 ~~shall not be~~

IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or property damage through an act ~~of~~ OR OMISSION THAT CONSTITUTES gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

NEW SECTION. **Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and PUBLIC HEALTH guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury, DEATH, OR PROPERTY DAMAGE.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of PUBLIC HEALTH guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

NEW SECTION. **Section 7. Limitation on action.** A government order, regulation, or PUBLIC HEALTH guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or PUBLIC HEALTH guidance.

NEW SECTION. **Section 8. Limitation on requirements.** (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section ~~10~~ 9. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured

product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section ~~3~~ 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses

against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

SECTION ~~11~~ 10. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

NEW SECTION. **Section ~~12~~ 11. Codification instruction.** [Sections 1 through ~~6~~ 8] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through ~~6~~ 8].

NEW SECTION. **Section ~~13~~ 12. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 13. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on passage and approval.

~~NEW SECTION.~~**~~Section 15. Retroactive applicability.~~**~~[This act] applies retroactively, within the meaning of 1-2-109, to claims made on or after January 1, 2021.~~

NEW SECTION. **Section ~~16~~ 15. Termination.** [This act] terminates January 1, 2031.

- END -

AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; AMENDING SECTION 27-1-719 AND 70-24-303, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 8], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, for the purposes of [sections 1 through 8], physicians, physician assistants, nurse practitioners, nurses, nursing assistants, chiropractors, pharmacists, pharmacy technicians, dentists, dental hygienists, optometrists, medication aides, respiratory therapist practitioners, professional

counselors, occupational therapists, midwifes, psychologists, and other health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

(3) "Health care provider" means and includes, for the purposes of [sections 1 through 8], a health care professional, health care facility, home health care facility, assisted living facility, and any other person or facility otherwise authorized or permitted by any federal or state statute, regulation, order, or public health guidance to administer health care services or treatment. It does not include a government entity or a health care professional that is employed by a government entity.

(4) "Person" means an individual, corporation, nonprofit corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, place of worship, personal representative, trustee, or any other legal or commercial entity. It does not include a government entity.

(5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

(6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

(7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of

health.

(8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections (8)(a) through (8)(e).

Section 2. Liability. Except as provided in [sections 3 through 8], a person is not liable for civil damages for injuries or death from or relating to exposure or potential exposure to covid-19 unless the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort.

Section 3. Premises owner's duty of care -- limited liability. (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, is not liable for civil damages for injuries or death sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort.

(2) The standard established in subsection (1) applies in landlord-tenant claims made under 70-24-303(1)(b) through (1)(e) for injuries or death sustained from an individual's exposure to covid-19.

Section 4. Liability of health care providers. A health care provider is not liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the response to covid-19 unless the health care provider caused the death or injury of an individual through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort. This section applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

Section 5. Supplies, equipment, and products designed, manufactured, labeled, sold,

distributed, and donated in response to covid-19. (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 is not liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 is not liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or property damage through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and public health guidance. (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury, death, or property damage.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of public health guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

Section 7. Limitation on action. A government order, regulation, or public health guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or public health guidance.

Section 8. Limitation on requirements. (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section 9. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition <u>that is</u> unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the

seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the

seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

Section 10. Section 70-24-303, MCA, is amended to read:

"**70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector.** (1) ~~A~~ Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and

habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to

perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through 8].

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective on passage and approval.

Section 15. Termination. [This act] terminates January 1, 2031.

- END -

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING SAFE HARBOR AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; AND AMENDING SECTION 27-1-719, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

I hereby certify that the within bill,

SB 65, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____day

of_____, 2021.

_____

Speaker of the House

Signed this _____day

of_____, 2021.

MINUTES

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Steve Fitzpatrick, on January 8, 2021 at 9:00 A.M., in Room 422 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Steve Fitzpatrick, Chair (R)
Sen. Gordon Vance, Vice Chair (R)
Sen. Terry Gauthier (R)
Sen. Bruce Gillespie (R)
Sen. Jason D. Small (R)
Sen. Cary Smith (R)
Sen. Mark Sweeney (D)

Members Present by Zoom Video Conference:

Sen. Carlie Boland, Vice Chair (D)
Sen. Christopher Pope (D)
Sen. Mike Fox (D)

Members Excused:

Sen. Jason W. Ellsworth (R)

Members Absent: None

Staff Present: Olivia Hopkins, Committee Secretary
Clara Bentler, Remote Meeting Coordinator
Sonja Nowakowski, Legislative Branch
Erin Sullivan, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 65, 1/5/2021; SB 66, 1/5/2021

09:01:10 Chair Fitzpatrick
09:01:28 Sen. Vance assumed the position of the chair

HEARING ON SB 65

Opening Statement by Sponsor:
09:01:44 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB65, Revise civil liability laws.

09:09:25 Sen. Boland
09:09:34 Chair Vance

Proponents' Testimony:
09:10:02 Bridger Mahlum, Montana Chamber of Commerce
EXHIBIT(bus05a01)
EXHIBIT(bus05a02)

09:13:19 Henry Kriegel, Americans for Prosperity
EXHIBIT(bus05a03)

09:16:35 Ronda Wiggers, National Federation of Independent Businesses
09:19:07 Abigail St. Lawrence, Montana Building Industry Association
09:21:17 E.J. Redding, Montana Beer and Wine Distributors Association
09:23:07 Aimee Grmoljez, Montana Bankers Association
09:24:38 Jessie Luther, Montana Hospital Association; Hospitality & Development Association of Montana; Rocky Mountain Power; Enterprise Holdings, Inc.
09:25:53 Daniel Brooks, Billings Chamber of Commerce
09:27:25 Brad Griffin, Montana Retail Association; Montana Restaurant Association
09:28:25 Gregory Dorrington, Montana Medical Association
09:29:37 Tammy Johnson, Montana Mining Association
09:31:13 Jay Bodner, Montana Stockgrowers Association
09:32:11 Stephen Wahrlich
09:33:56 Amanda Cahill, American Heart Association
09:35:13 Stuart Dogget, Montana Lodging and Hospitality Association
09:36:32 Rachel Cone, Montana Farm Bureau Federation
09:37:19 Gary Wiens, Montana Electric Cooperatives' Association
09:38:19 Dave Galt, Montana Petroleum Association
09:39:05 David Smith, Montana Contractors' Association

Proponents' Testimony Received Online:
EXHIBIT(bus05a04)

Opponents' Testimony:
09:40:42 David Passieri
09:46:31 Al Smith, Montana Trial Lawyers Association (MTLA)
09:57:33 Laurie Little Dog, Let Them Come Home, Institutionalized Persons in Montana
10:01:09 Sen. Vance
10:01:27 Ms. Little Dog

Opponents' Testimony Received Online:
EXHIBIT(bus05a05)

Informational Testimony:
EXHIBIT(bus05a06)

Questions from Committee Members and Responses:

10:04:20	Sen. Boland
10:06:25	Sen. Fitzpatrick
10:09:56	Sen. Boland
10:10:47	Sen. Sweeney
10:11:15	Sen. Fitzpatrick
10:12:17	Sen. Gauthier
10:12:39	Sen. Fitzpatrick
10:13:29	Sen. Gillespie
10:13:44	Sen. Fitzpatrick
10:14:58	Sen. Gillespie
10:15:10	Sen. Fitzpatrick
10:15:43	Sen. Pope
10:16:59	Sen. Fitzpatrick
10:19:53	Sen. Pope
10:21:02	Sen. Fitzpatrick
10:23:23	Sen. Pope
10:23:51	Mr. Smith, MTLA
10:23:58	Sen. Pope
10:24:44	Mr. Smith

Closing by Sponsor:

10:26:45	Sen. Fitzpatrick
10:28:36	Chair Vance

HEARING ON SB 66

Opening Statement by Sponsor:

10:28:50 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB66, Generally revise the Montana Business Corporation Act.

Proponents' Testimony:

10:31:31	Bridger Mahlum, Montana Chamber of Commerce
10:32:25	Vincent Kalafat, attorney, Business Estate Trust Tax
10:33:57	Keith Tokerud, attorney

Proponents' Testimony Received Online:
EXHIBIT(bus05a07)

Opponents' Testimony: None

Informational Testimony:

10:36:41	Kellee English, Montana Secretary of State

Questions from Committee Members and Responses: None

Closing by Sponsor:

10:37:39 Sen. Fitzpatrick
10:38:00 Sen. Fitzpartick assumed the duties of the chair.

10:38:01 Chair Fitzpatrick

ADJOURNMENT

Adjournment: 10:39 A.M.

_____
Olivia Hopkins, Secretary

oh

Additional Documents:

EXHIBIT(bus05aad.pdf)

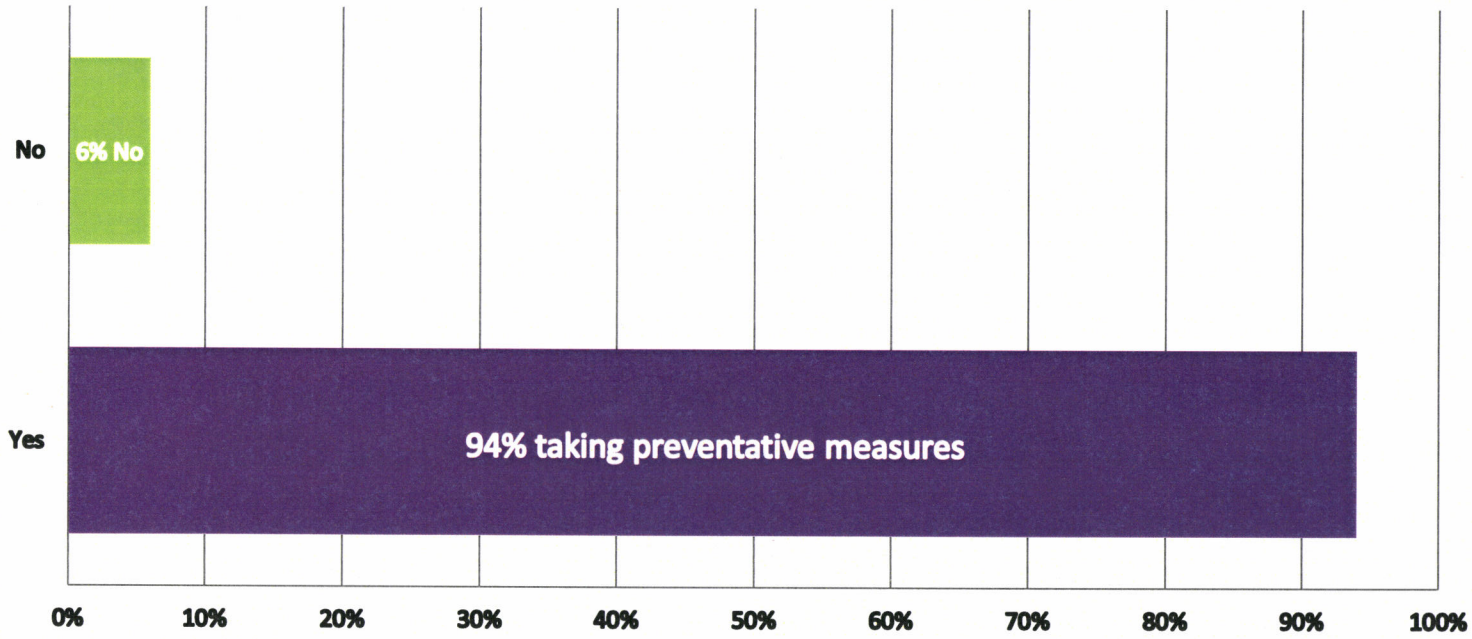
MONTANA CHAMBER OF COMMERCE

Coronavirus and Business Liability Survey Results
June 30, 2020

BUSINESS & LABOR
EXHIBIT NO. 1
DATE 01/08/2021
BILL NO. SB 65

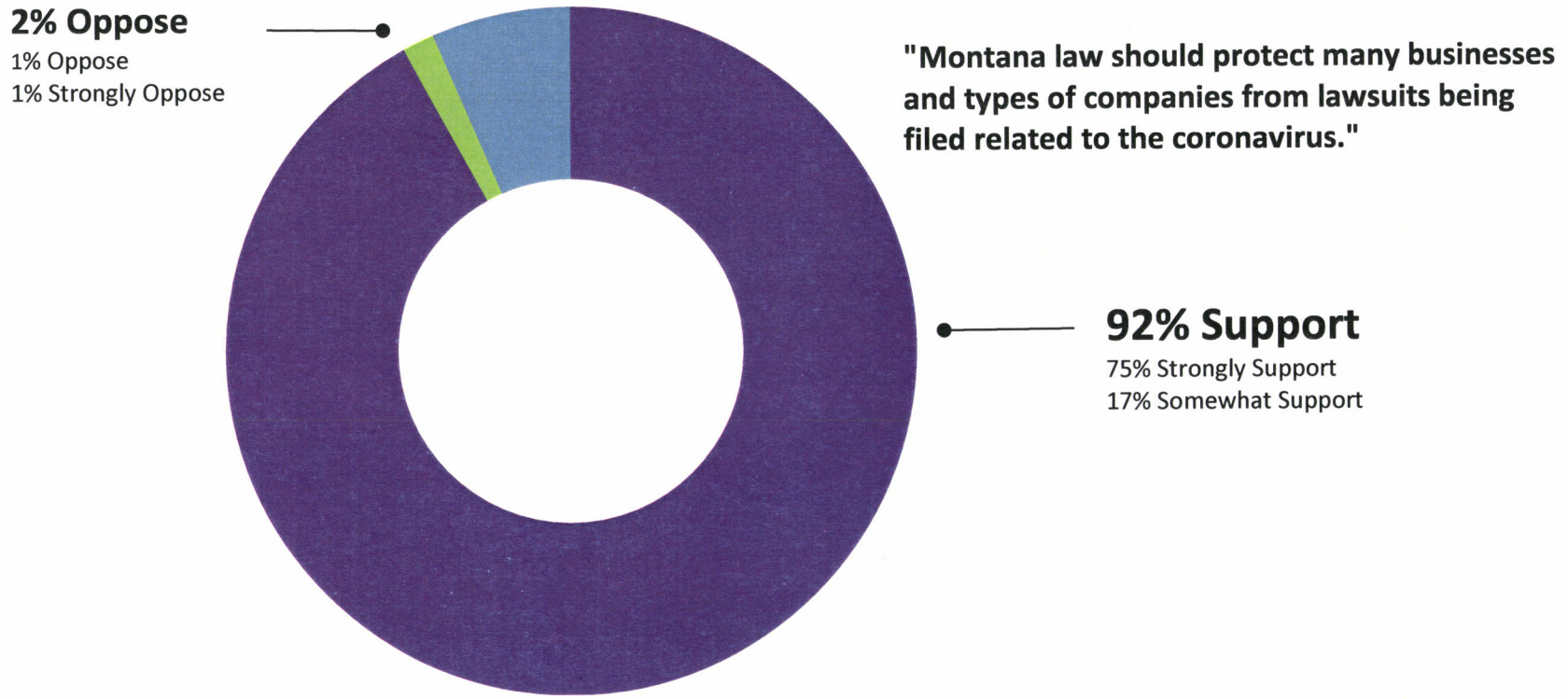
1. Do you plan to take, or are you already taking, preventive measures to help protect your employees and customers from the coronavirus they while at your business?

Answer Choices	Responses	
Yes	94%	189
No	6%	12
	Answered	**201**



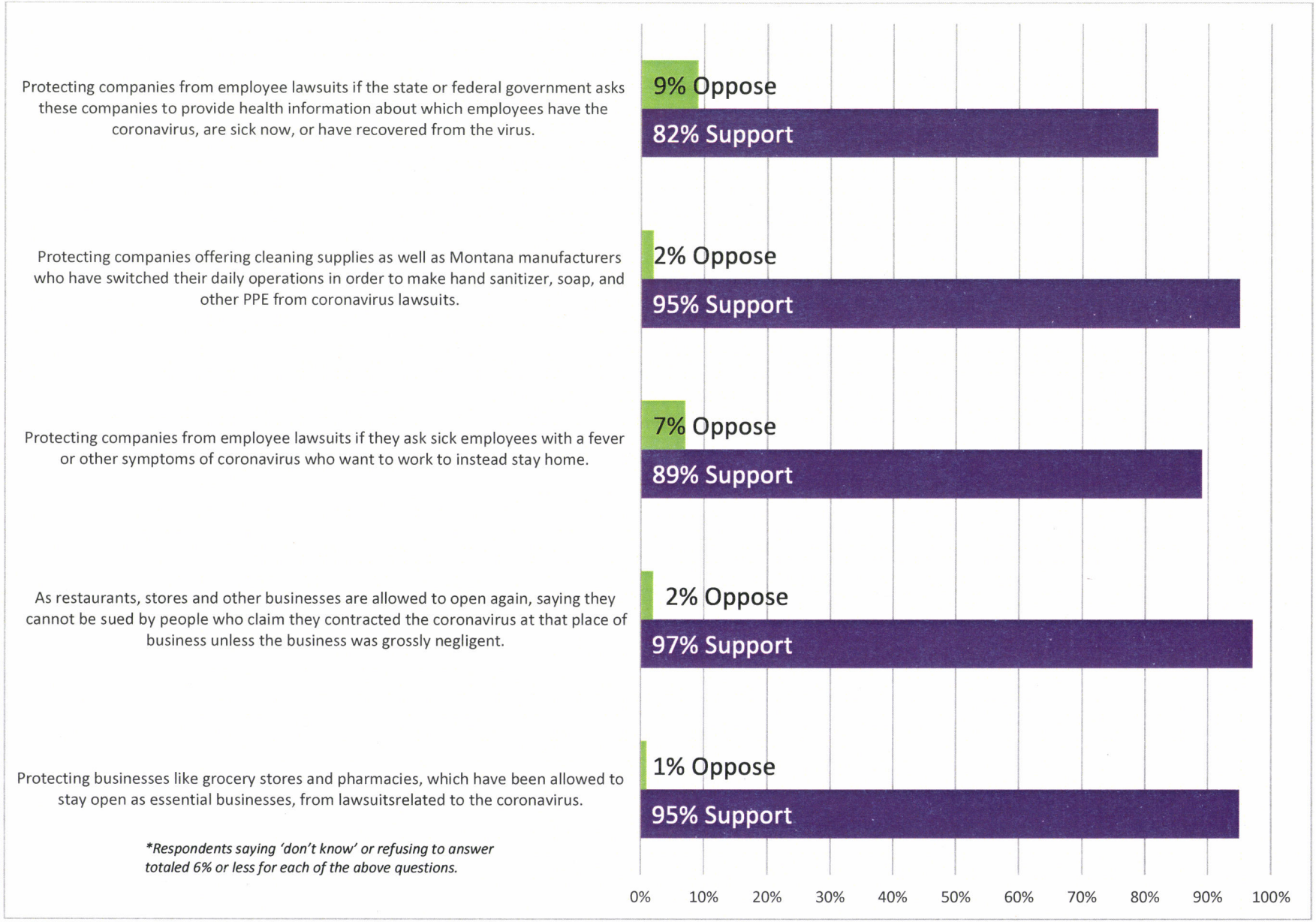
2. Do you support or oppose the following statement: "Montana law should protect many businesses and types of companies from lawsuits being filed related to the coronavirus."

Answer Choices	Responses	
Strongly support	75%	151
Support	17%	34
Oppose	1%	1
Strongly oppose	1%	2
I don't know	5%	9
I do not want to answer this question	2%	4
Answered		**201**


2% Oppose
1% Oppose
1% Strongly Oppose
"Montana law should protect many businesses and types of companies from lawsuits being filed related to the coronavirus."
92% Support
75% Strongly Support
17% Somewhat Support

3. Consider the following 5 proposals. One requirement in common would be each business would have to be following the latest health guidelines issued by government officials. Now, please tell me if you would support or oppose each proposal.

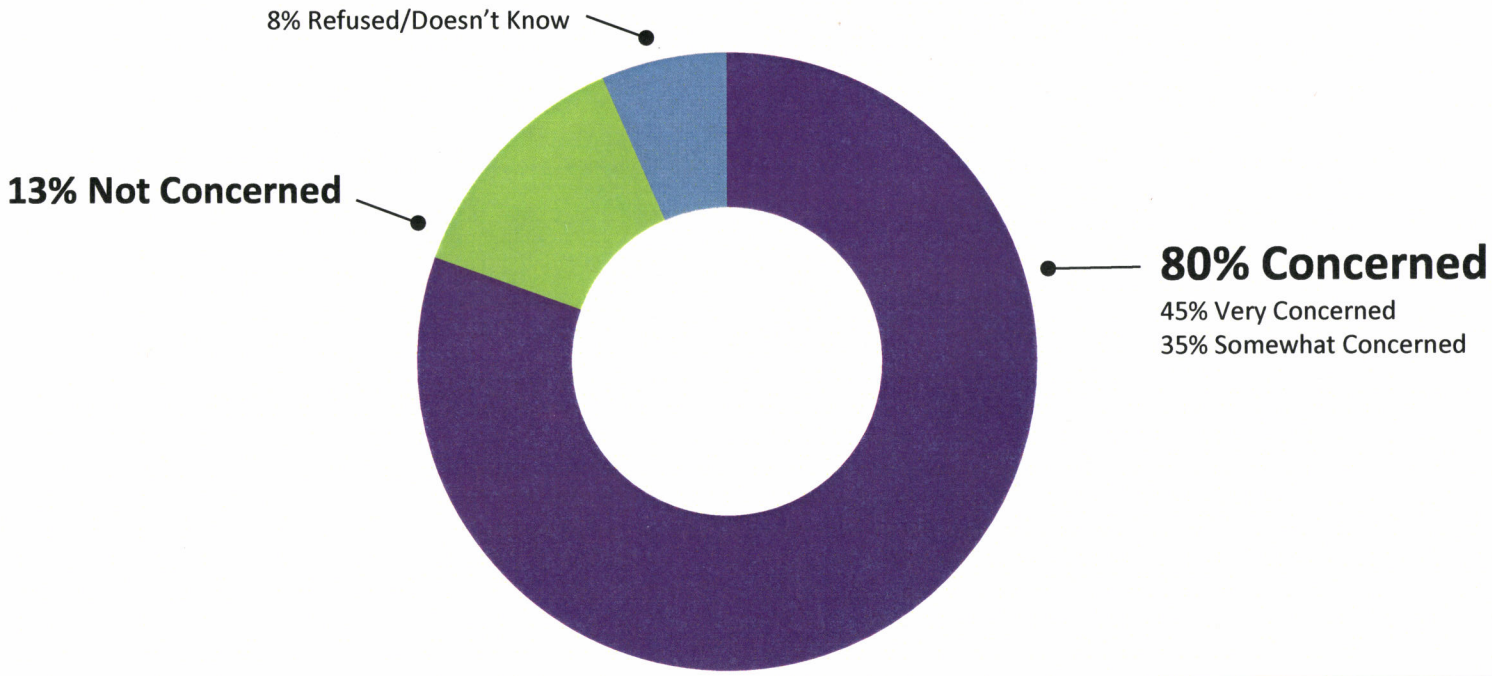
	Strongly support	Support	Oppose	Strongly oppose	I do not know	I do not want to answer this question
Protecting businesses like grocery stores and pharmacies, which have been allowed to stay open as essential businesses, from lawsuits related to the coronavirus.	75%	21%	0%	1%	3%	1%
As restaurants, stores and other businesses are allowed to open again, saying they cannot be sued by people who claim they contracted the coronavirus at that place of business unless the business was grossly negligent.	77%	20%	1%	1%	2%	0%
Protecting companies from employee lawsuits if they ask sick employees with a fever or other symptoms of coronavirus who want to work to instead stay home.	75%	14%	4%	3%	4%	1%
Protecting companies offering cleaning supplies as well as Montana manufacturers who have switched their daily operations in order to make hand sanitizer, soap, and other PPE from coronavirus lawsuits.	74%	21%	1%	1%	2%	2%
Protecting companies from employee lawsuits if the state or federal government asks these companies to provide health information about which employees have the coronavirus, are sick now, or have recovered from the virus.	65%	17%	6%	3%	6%	4%
					Answered	**199**
					Skipped	**2**


Protecting companies from employee lawsuits if the state or federal government asks these companies to provide health information about which employees have the coronavirus, are sick now, or have recovered from the virus.
9% Oppose
82% Support
Protecting companies offering cleaning supplies as well as Montana manufacturers who have switched their daily operations in order to make hand sanitizer, soap, and other PPE from coronavirus lawsuits.
2% Oppose
95% Support
Protecting companies from employee lawsuits if they ask sick employees with a fever or other symptoms of coronavirus who want to work to instead stay home.
7% Oppose
89% Support
As restaurants, stores and other businesses are allowed to open again, saying they cannot be sued by people who claim they contracted the coronavirus at that place of business unless the business was grossly negligent.
2% Oppose
97% Support
Protecting businesses like grocery stores and pharmacies, which have been allowed to stay open as essential businesses, from lawsuitsrelated to the coronavirus.
1% Oppose
95% Support
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

**Respondents saying 'don't know' or refusing to answer totaled 6% or less for each of the above questions.*

4. Considering the proposals you just read, are you concerned that unlike several other states, Montana has not done anything to address liability for employers even though Montana is opening earlier and faster than many other states?

Answer Choices	Responses	
Very concerned	45%	90
Somewhat concerned	35%	71
Not concerned	13%	26
I don't know	7%	13
I do not want to answer this question	1%	1
Other (please specify)		1
	Answered	**201**



BUSINESS & LABOR
EXHIBIT NO. 2
DATE 01/08/2021
BILL NO. SB 65

Economic Affairs Interim Committee

66th Montana Legislature

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

SENATE MEMBERS
JASON ELLSWORTH
NATE MCCONNELL
FRANK SMITH
GORDON VANCE

HOUSE MEMBERS
DEREK HARVEY
JOSH KASSMIER
MARK NOLAND
VINCE RICCI, Vice Chair
SHARON STEWART PEREGOY, Chair
KATIE SULLIVAN

COMMITTEE STAFF
PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
FONG HOM, Secretary

July 22, 2020

Via Email

Dear Governor Bullock:

At its June 30-July 1 meeting the Economic Affairs Interim Committee (EAIC) discussed concerns about business liability if customers or employees become infected with COVID-19 and blame the business for contributing to that infection. Committee member Rep. Mark Noland asked the EAIC to follow up on a letter that he and Sen. Steve Fitzpatrick had sent to you in June, citing their concerns that businesses need assurance that neither customers nor employees would improperly place blame in the current pandemic. A June 10 *Flathead Beacon* article highlighted their concerns. See https://flatheadbeacon.com/2020/06/10/republican-lawmakers-request-liability-protections-businesses/.

The EAIC staff attorney reviewed actions taken by about a dozen states, many in the past 6 months, to provide immunity from damages to medical facilities or other businesses for COVID-19 services that were not grossly negligent. See https://leg.mt.gov/content/Committees/Interim/2019-2020/Economic-Affairs/Meetings/June-July2020/covid-business-liability-memo.pdf. The attorney also pointed out that 28-2-702, MCA, emphasizes that Montana's public policy is not to exempt "directly or indirectly ... anyone from responsibility for the person's own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent".

Recognizing these constraints, the Economic Affairs Interim Committee is requesting you, Governor Bullock, to determine what type of reassurance to businesses would best encourage resumption of operations without fear of facing lawsuits. Recognizing that the Governor has emergency powers to protect the public health as well as property, the members of the Committee urge consideration of waivers from liability, outright immunity, or a moratorium on COVID-19 lawsuits in situations under which a business is not grossly negligent, much as the Governor requested a stay on evictions during this unprecedented time.

As indicated by a Montana Chamber of Commerce survey taken in June 2020, 90% of the more than 200 businesses surveyed were in support of a Montana law that would protect many businesses from lawsuits filed in relation to the coronavirus. See https://leg.mt.gov/content/Committees/Interim/2019-2020/Economic-Affairs/Meetings/June-July2020/Chamber-CoronavirusBusiness-Liability-Survey.pdf.

Getting Montana businesses back in service, with appropriate precautions for workers and customers, is good for Montana. The EAIC urges the Governor to take actions that would reassure businesses of support that minimizes lawsuits and maximizes health, safety, and economic well-being for people and businesses in Montana.

Sincerely,

Rep. Sharon Stewart Peregoy, presiding officer
cc: Montana Chamber of Commerce

CI0425 0204fhxa.pdf

BUSINESS & LABOR
EXHIBIT NO. 3
DATE 01/08/2021
BILL NO. SB 65

Testimony in Support of SB 65
January 8, 2021
Henry Kriegel, Americans For Prosperity—Montana

My name is Henry Kriegel and I'm representing Americans For Prosperity—Montana.

We stand in support of SB65.

It is critical for the Montana legislature to consider reasonable reforms that provide clarity and limit frivolous lawsuits related to COVID-19. This will allow health care providers, charities, and businesses to more freely and confidently operate and serve our communities in this unprecedented time of need and challenge. At the same time, we can continue to protect individuals against gross negligence, criminal misconduct, and fraud which this bill will also accomplish.

Lawsuits targeting responsible institutions which follow available guidance and the latest science erodes trust that is needed for economic recovery, mutually beneficial interactions within communities, and between businesses and customers, health care providers and patients.

Americans from all walks of life have come together to fight COVID-19 pandemic. Front line health care workers, businesses of all sizes, schools, faith-based organizations, and nonprofits have stepped up to provide care and relief to the communities they serve. However, these

community efforts could be undermined by frivolous lawsuits that can disrupt economic recovery, increase health care costs, and cause the price of goods and services to soar.

To date, nearly 7,000 COVID-19 lawsuits have been filed across the country as of January 6, 2021—32 of which were filed in Montana. These claims range from negligence lawsuits and medical malpractice to public nuisance and product liability. This litigation could create massive uncertainty as our economy continues to recover and would impact charities, hospitals, emergency-supply manufacturers, nursing homes, long-term care facilities and government entities. The bulk of COVID-19-related liability is at the state level, We at Americans for Prosperity support SB 65 because it clarifies legitimate from frivolous claims, particularly for lawsuits that could complicate COVID-19 response efforts and significantly slow down our economic recovery.

BUSINESS & LABOR
EXHIBIT NO. 4
DATE 01/08/2021
BILL NO SB 65

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 1:04 PM
To: etaylor@mtbev.org; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 13:03

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Beverage Association
Name: Elaine Taylor
Email: etaylor@mtbev.org
Phone: (406) 459-7658
City, State: Helena, MT
Written Statement: Montana Beverage Association supports SB 65 and protections it offers related to the COVID-19 pandemic.
Files:
Testify via Zoom: No
Zoom Method: N/A

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:54 AM
To: gdorrington@crowleyfleck.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:54

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Medical Association
Name: Gregory Dorrington
Email: gdorrington@crowleyfleck.com
Phone: (425) 330-7993
City, State: Helena, MT
Written Statement: Montana Medical Association supports SB 65 and understands that some friendly amendments may be offered.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:54 AM
To: jay@mtbeef.org; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:53

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Stockgrowers Association
Name: Jay Bodner
Email: jay@mtbeef.org
Phone: (406) 442-3420
City, State: Helena
Written Statement: On behalf of the Montana Stockgrowers Association, this is an important piece of legislation that will protect ranchers across the state.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:54 AM
To: tjohnson@montanamining.org; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:53

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Mining Association
Name: Tammy Johnson
Email: tjohnson@montanamining.org
Phone: (406) 491-1714
City, State: Whitehall, MT
Written Statement: The Montana Mining Association supports SB 65.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:45 AM
To: gdorrington@crowleyfleck.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:44

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Defense Trial Lawyers
Name: Gregory Dorrington
Email: gdorrington@crowleyfleck.com
Phone: (425) 330-7993
City, State: Helena, MT
Written Statement: Montana Defense Trial Lawyers supports this bill in concept and intends to work with the sponsor on friendly amendments.
Files:
Testify via Zoom: No
Zoom Method: N/A

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:37 AM
To: brad.griffin@mtretail.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:37

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Restaurant Association, Montana Retail
Name: Brad Griffin
Email: brad.griffin@mtretail.com
Phone: (406) 855-5939
City, State: Billings, MT
Written Statement: Good morning Mr. Chair and members of the Committee, my name is Brad Griffin, representing two of the hardest hit industries by the pandemic; Montana Retail Association and Montana Restaurant Association. As we struggle to get back to pre-pandemic levels of business, this bill is important to prevent us from being sued if we are taking all the precautions and following the protocols. It only allows for litigation for knowingly and willfully putting employees in danger. We are in support of the bill and urge your support.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:32 AM
To: Grmoljez, Amy; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:31

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Aimee Grmoljez
Email: agrmoljez@crowleyfleck.com
Phone: (406) 459-5958
City, State: Helena, MT
Written Statement: MT Bankers Association supports. Banks worked throughout the Pandemic to process PPP loans to 24,000 businesses in MT. Shortly after they worked with the MT Board of Investments in standing up two programs funded by the CARES act—a working capital program and a loan deferment program—that helped hundreds of small businesses, notably hotels/motels/restaurants particularly hard hit by the downturn. Banks have worked with thousands of Montana families in restructuring loans, offering forbearance on loan payments, etc. They have done this largely while working from home with bank lobbies closed to protect their employees and customers. Holding them liable for conditions totally outside their control is not fair.
American Property and Casualty Association supports this legislation as well.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:28 AM
To: gary@mtco-ops.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:27

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Gary Wiens
Email: gary@mtco-ops.com
Phone: (406) 868-9177
City, State: Great Falls, MT
Written Statement: Mr. Chair, Members of the Committee, Montana Electric Cooperatives' Association supports SB 65. We represent more than 400,000 Montanans who receive their electricity from local, member-owned electric cooperatives.

Our co-ops are also small businesses whose operations have a presence in every single county in Montana. Their viability is important to the economic vitality of our state. Although our co-ops have a great track record of safeguarding the welfare of the public, obviously, a flood of unmeritorious lawsuits as a result of the pandemic would hurt our co-ops and, as a result, our local communities. Please vote yes on this bill.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:24 AM
To: daniel@billingschamber.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:24

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Billings Chamber of Commerce
Name: Daniel Brooks
Email: daniel@billingschamber.com
Phone: (406) 580-8560
City, State: Billings, MT
Written Statement: Good Morning Mr. Chair and Members of the Committee,

My name is Dan Brooks and I represent the Billings Chamber of Commerce. We encourage a Do Pass on Senate Bill 65.

From the start of this pandemic, our businesses have done their best to do the right thing and protect employees, customers, and communities. When the Phase 1 guidelines went into place, our business community stepped up and largely followed the governor's directives. As part of the Open & Safe campaign, we hosted large virtual town halls and smaller industry roundtables, connecting businesses to the county health officer and Governor's Office because our businesses are genuinely interested in knowing how to do the right thing.

A survey of our chamber membership in November showed 78% believe wearing a mask is important and 88% believe physical distancing is important. Nine months in, our businesses continue to do the right thing, despite the hardship and losses they continue to suffer. We need to make sure that we protect that good behavior--to incentivize continued adherence to best practices. Senate Bill 65 and it's safe harbor protection achieves this.

For that reason, we ask you to vote yes on Senate Bill 65. Thank you to the sponsor and everyone working hard on this issue and thank you for your time.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 4:16 PM
To: amanda.cahill@heart.org; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 16:16
Attachments: American Heart Association Testimony for SB 65. Amanda Cahill .pdf

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: American Heart Association
Name: Amanda Cahill
Email: amanda.cahill@heart.org
Phone: (406) 220-0063
City, State: Montana
Written Statement: Amanda Cahill- Representing the American Heart Association- a nonprofit, nonpartisan organization that seeks to be a relentless force for a world of longer, healthier lives.

I stand in support of this legislation as one of more than 2000 nonprofit organizations in Montana for two main reasons:
1. Covid-19 has had a devastating impact on nonprofit organizations, and especially nonprofits such as the AHA that rely on charitable donations that are gathered in-person events.
2. To continue the lifesaving mission of the AHA and other nonprofits, Covid-19 liability protections are necessary to guard against the concern of frivolous lawsuits.

I respectfully ask the sponsor to consider two amendments to the legislation.
1. To Section 1 Definitions: The addition of the broad definition of 'person' as outlined in:
35-7-102 (18) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

2. An effective date that precedes the start of the Covid 19 Pandemic such as Jan 1, 2020.

Thank you to Senator Fitzpatrick for bringing forward this important legislation.

Amanda Cahill
Files: American Heart Association Testimony for SB 65. Amanda Cahill .pdf Testify via Zoom: Yes Zoom Method: Computer

American Heart Association.

Amanda Cahill- Representing the American Heart Association- a nonprofit, nonpartisan organization that seeks to be a relentless force for a world of longer, healthier lives.

I stand in support of this legislation as one of more than 2000 nonprofit organizations in Montana for two main reasons:

1. Covid-19 has had a devastating impact on nonprofit organizations, and especially nonprofits such as the AHA that rely on charitable donations that are gathered in-person events.
2. To continue the lifesaving mission of the AHA and other nonprofits, Covid-19 liability protections are necessary to guard against the concern of frivolous lawsuits.

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2. An effective date that precedes the start of the Covid 19 Pandemic such as Jan 1, 2020.

Thank you to Senator Fitzpatrick for bringing forward this important legislation.

Amanda Cahill

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 9:21 AM
To: rachelc@mfbf.org; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 09:21

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Farm Bureau Federation
Name: Rachel Cone
Email: rachelc@mfbf.org
Phone: (970) 646-8001
City, State: Bozeman, MT
Written Statement: Montana Farm Bureau supports SB 65.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 7:48 AM
To: jessie@taylorluthergroup.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 07:48

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: MHA, Talen Montana, Idaho Forest Group, +others
Name: Jessie Luther
Email: jessie@taylorluthergroup.com
Phone: (406) 465-9513
City, State: Helena, MT
Written Statement: Montana Hospital Association, Talen Montana, Idaho Forest Group, Hospitality & Development Association of Montana, Rocky Mountain Power, and Enterprise Holdings, Inc. strongly support SB 65 and believe the legislation is necessary to protect businesses that were providing services during the pandemic according to state and federal recommendations.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Wednesday, January 6, 2021 4:09 PM
To: Galtdavidmt@gmail.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-06-21 16:08

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Dave Galt
Email: Galtdavidmt@gmail.com
Phone: (406) 461-1314
City, State: Helena
Written Statement: I will be representing the Montana Petroleum Association we will be in support Of SB 65
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Wednesday, January 6, 2021 10:59 AM
To: sw@bwclocktowerinn.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-06-21 10:59

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Stephen Wahrlich
Email: sw@bwclocktowerinn.com
Phone: (406) 325-1732
City, State: Billings, MT
Written Statement: I'm the owner of the ClockTower Inn and Stella's Kitchen and Bakery in Billings, MT. I currently employ approximately 65 individuals and am in favor of this bill. I believe that once the crisis is over there will become many frivolous lawsuits being generated against business that have done everything in their power to protect their guests and employees.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Wednesday, January 6, 2021 8:28 AM
To: stuart@montana.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-06-21 08:28

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Lodging & Hospitality Association
Name: Stuart Doggett
Email: stuart@montana.com
Phone: (406) 439-5490
City, State: Helena, Montana
Written Statement: On behalf of the Montana Lodging & Hospitality Association and our lodging members across the state we want to express our full support of Senate Bill 65. The COVID-19 crisis has inflicted great economic harm on our members and SB 65 will help work to protect operators from frivolous lawsuits. Thank you, Stuart Doggett
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:04 AM
To: david@mtagc.org; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:04
Attachments: SB 65.pdf

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Contractors Association
Name: David Smith
Email: david@mtagc.org
Phone: (406) 442-4162
City, State: Helena
Written Statement: Mr. Chair and members of the Senate Business & Labor Committee

I am presenting this information in support of Senate Bill 65, which aims to limit the liability of employers as it relates to COVID-19 exposure.

Attached are several examples of protocol from Montana contractors. Construction was declared an essential business, and was allowed to operate during the pandemic. As you can see, given this responsibility, contractors were extremely cautious about job sites, employee behavior and following decision trees.
In general:

- Contractors understood to follow CDC guidelines and provided that information to the crews in the field.
- Crews were supplied with face masks when social distancing was not practicable.
- Truck drivers and equipment operators were supplied with sanitizer and disinfectant to sanitize the cabs at the end of their shifts.
- Supervisors discussed COVID symptoms with their crews during tool box talks so that anyone presenting with symptoms would know to stay home.
- Employers purchased 4-5 different kinds of masks with the intent of each employee finding one that worked for them.
- Employees were educated on the risks, signs/ symptoms of the virus and what to do if they were a close contact or possibly had the virus.
- Many contractors built hand-wash stations.
- Car-pooling protocols were revised.
- Shifts were staggered and work schedules varied in order to distance job-specific duties.

My point is that in the construction industry, employers took every precaution possible to reduce the risk on the job site.

As one owner of a construction firm concluded "We attempted to over communicate. And we reminded people to be kind, it's all of our first time at a pandemic."

I ask for a do-pass on Senate Bill 65, to limit the liability of employers from work-related COVID-19 claims.
Files: SB 65.pdf
Testify via Zoom: Yes

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:24 AM
To: lmoore@mtnonprofit.org; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:24
Attachments: MNA Testimony_SB65.pdf

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Liz Moore
Email: lmoore@mtnonprofit.org
Phone: (406) 461-4964
City, State: Helena, MT
Written Statement: Dear Chairperson Fitzpatrick and Members of the Business, Labor and Economic Affairs Committee,

As Executive Director of the Montana Nonprofit Association (MNA), please accept this written testimony in support of SB 65 - Revise civil liability laws.

MNA is the professional association for charitable nonprofits in Montana. Our 600 member organizations come from almost every county in the state and represent the larger nonprofit community. Approximately 2,300 of Montana's business entities are nonprofits, and together the nonprofit workforce is more than 11% of Montana's employees. MNA supports the liability protections outlined in the bill and respectfully requests that nonprofit entities are ensured of the same protections as for-profit employers under this bill and treated with parity throughout the language of the statute.

We request you support SB 65.

Thank you,

Liz Moore
Executive Director
Montana Nonprofit Association
PO Box 1744
Helena, MT 59601
Files: MNA Testimony_SB65.pdf
Testify via Zoom: No
Zoom Method: N/A

MONTANA CONTRACTORS ASSOC.
THE CONSTRUCTION ASSOCIATION

January 7, 2021

Mr. Chair and members of the Senate Business & Labor Committee

I am presenting this information in support of Senate Bill 65, which aims to limit the liability of employers as it relates to COVID-19 exposure.

Attached are several examples of protocol from Montana contractors. Construction was declared an essential business, and was allowed to operate during the pandemic. As you can see, given this responsibility, contractors were extremely cautious about job sites, employee behavior and following decision trees.

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- Contractors understood to follow CDC guidelines and provided that information to the crews in the field.
- Crews were supplied with face masks when social distancing was not practicable.
- Truck drivers and equipment operators were supplied with sanitizer and disinfectant to sanitize the cabs at the end of their shifts.
- Supervisors discussed COVID symptoms with their crews during tool box talks so that anyone presenting with symptoms would know to stay home.
- Employers purchased 4-5 different kinds of masks with the intent of each employee finding one that worked for them.
- Employees were educated on the risks, signs/ symptoms of the virus and what to do if they were a close contact or possibly had the virus.
- Many contractors built hand-wash stations.
- Car-pooling protocols were revised.
- Shifts were staggered and work schedules varied in order to distance job-specific duties.

My point is that in the construction industry, employers took every precaution possible to reduce the risk on the job site.

As one owner of a construction firm concluded "We attempted to over communicate. And we reminded people to be kind, it's all of our first time at a pandemic."

I ask for a do-pass on Senate Bill 65, to limit the liability of employers from work-related COVID-19 claims.

Respectfully,

David Smith
Executive Director
Montana Contractors Association

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 8:11 AM
To: mjohnston@namic.org; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 08:10
Attachments: SB 65 Testimony.pdf

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: National Association of Mutual Insurance Companies
Name: Mark Johnston
Email: mjohnston@namic.org
Phone: (317) 650-5968
City, State: Saint Louis, Missouri
Written Statement: The National Association of Mutual Insurance Companies (NAMIC) endorses SB 65. Please see the attached letter.
Files: SB 65 Testimony.pdf
Testify via Zoom: No
Zoom Method: N/A

NAMIC®
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

317.875.5250 | [F] 317.879.8408
3601 Vincennes Road, Indianapolis, Indiana 46268

202.628.1558 | [F] 202.628.1601
20 F Street N.W., Suite 510 | Washington, D.C. 20001

January 7, 2021

The Honorable Steve Fitzpatrick
Chair, Senate Business, Labor and Economic Affairs Committee
State Capitol
Helena, Montana 59620

Re: Letter in Support of SB 65 – January 8, 2021 Hearing

Dear Chairman Fitzpatrick and Committee Members:

The National Association of Mutual Insurance Companies (NAMIC)[1] writes to urge the Senate Business, Labor and Economic Affairs Committee favorably report SB 65, which will provide critically needed protection from unwarranted lawsuits to health care providers, medical suppliers, small businesses and others who continue to ably serve the public during the COVID-19 pandemic.

As we have learned, the strategies used to treat patients, serve the critical needs of our communities while keeping Montanans employed have been continually modified as the nation came to understand more about the virus. Strategies that made sense at one time have been adapted or replaced by new protocols learned after experience. Montana lawmakers know the tremendous stress that has been put upon the backs of society; SB 65 is a well-balanced, thoughtful approach to reducing that stress.

NAMIC appreciates your attention to this issue. If you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely

Regional Vice President – Midwest and Rocky Mountains

[1] The National Association of Mutual Insurance Companies is the largest property/casualty insurance trade group with a diverse membership of more than 1,400 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. In Montana, we have 179 member companies, including eight domiciled companies, which underwrite 49% of the state's insurance coverage.

M·N·A
Montana Nonprofit Association
P.O. Box 1744 • Helena, MT 59624
Phone 406-449-3717 • Fax 406-449-3718 • info@mtnonprofit.org • www.mtnonprofit.org

January 7, 2021

Dear Chairperson Fitzpatrick and Members of the Business, Labor and Economic Affairs Committee,

As Executive Director of the Montana Nonprofit Association (MNA), please accept this written testimony in support of *SB 65 - Revise civil liability laws.*

MNA is the professional association for charitable nonprofits in Montana. Our 600 member organizations come from almost every county in the state and represent the larger nonprofit community. Approximately 2,300 of Montana's business entities are nonprofits, and together the nonprofit workforce is more than 11% of Montana's employees. MNA supports the liability protections outlined in the bill and respectfully requests that nonprofit entities are ensured of the same protections as for-profit employers under this bill and treated with parity throughout the language of the statute.

We request you support SB 65.

Thank you,

Liz Moore
Executive Director
Montana Nonprofit Association
PO Box 1744
Helena, MT 59601

Hopkins, Olivia

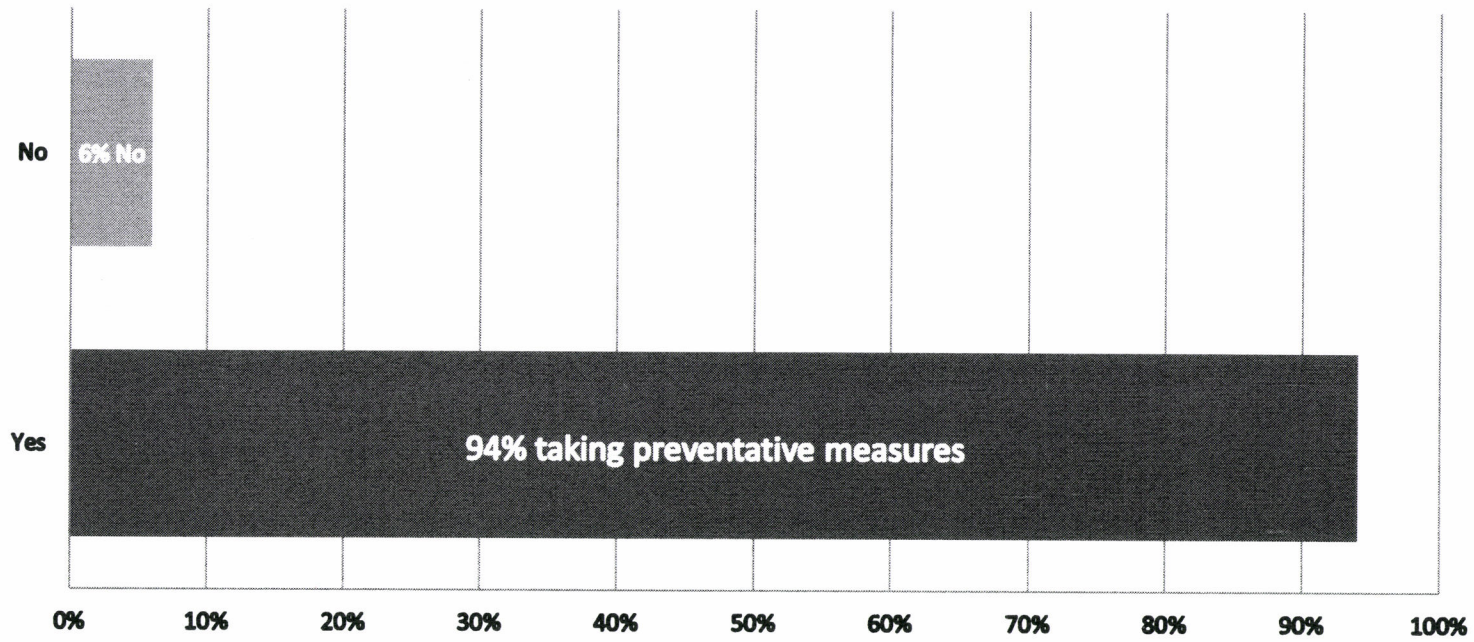
From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:07 AM
To: bridger@montanachamber.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:07
Attachments: Coronavirus and Business Liability Survey Results - MT Chamber.pdf; LTR-COVID-Liability-Concerns.pdf

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Chamber of Commerce
Name: Bridger Mahlum
Email: bridger@montanachamber.com
Phone: (406) 270-2652
City, State: Helena, MT
Written Statement: Two exhibits attached to supplement in-person testimony.
Files: Coronavirus and Business Liability Survey Results - MT Chamber.pdf LTR-COVID-Liability-Concerns.pdf Testify via Zoom: No Zoom Method: N/A

Coronavirus and Business Liability Survey Results
June 30, 2020

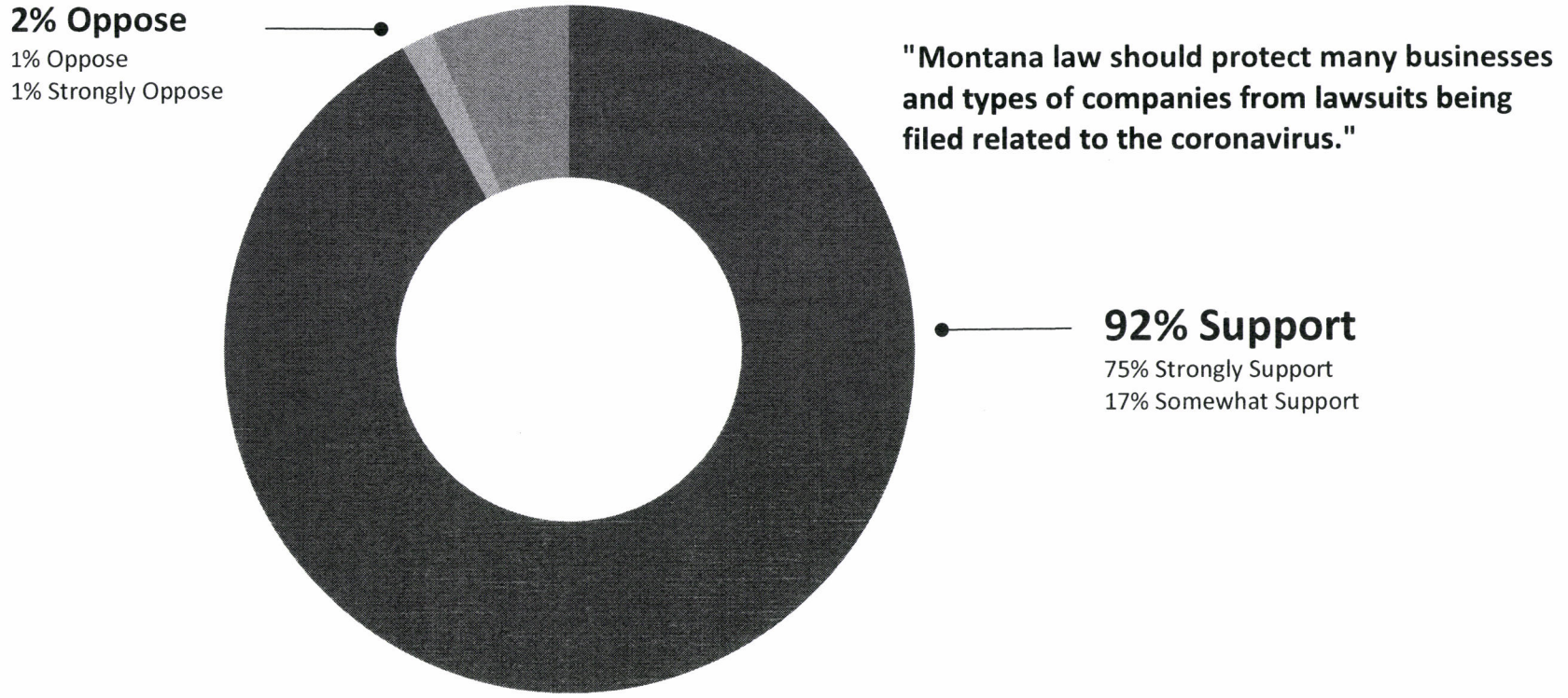
1. Do you plan to take, or are you already taking, preventive measures to help protect your employees and customers from the coronavirus they while at your business?

Answer Choices	Responses	
Yes	94%	189
No	6%	12
	Answered	**201**



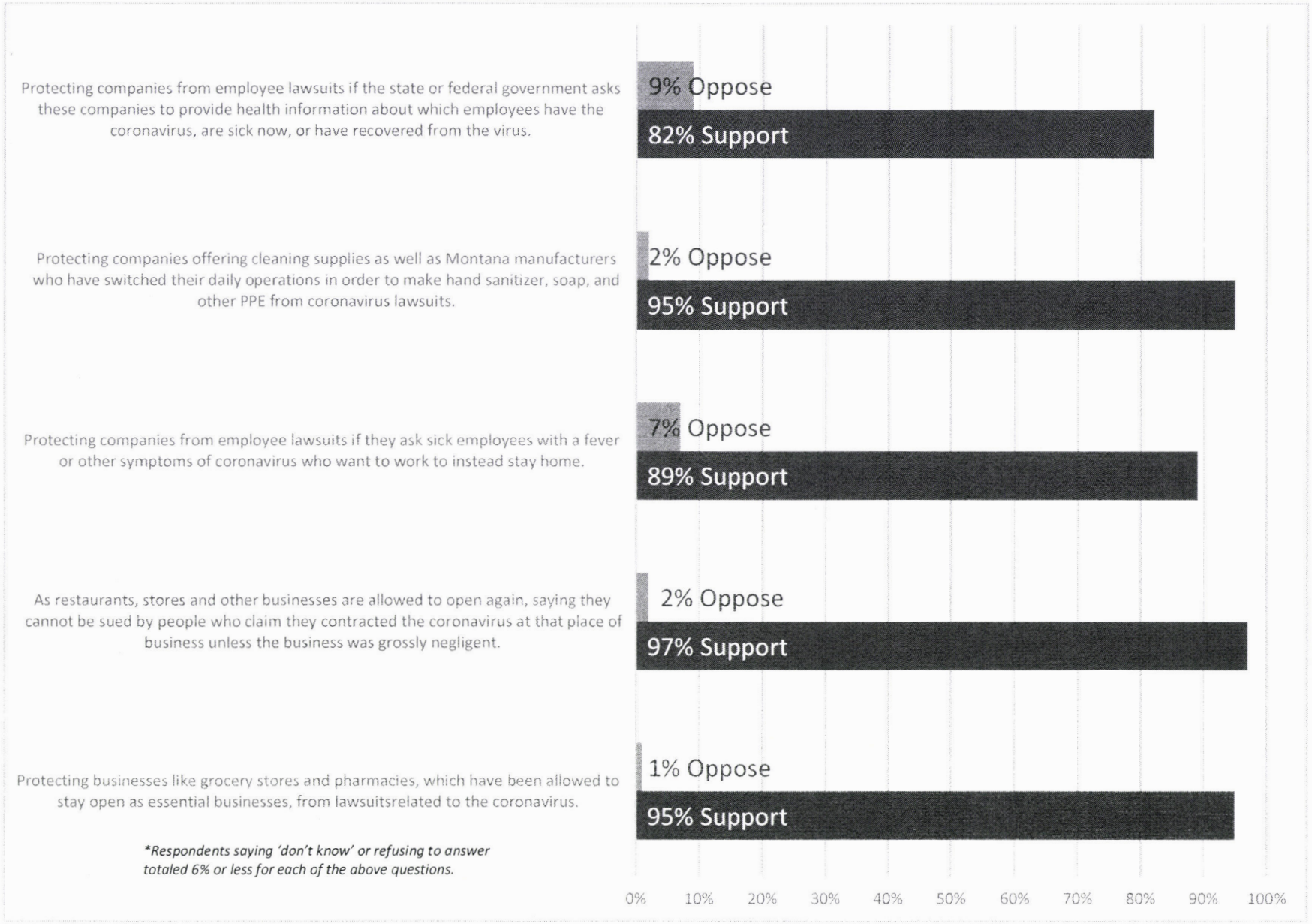
2. Do you support or oppose the following statement: "Montana law should protect many businesses and types of companies from lawsuits being filed related to the coronavirus."

Answer Choices	Responses	
Strongly support	75%	151
Support	17%	34
Oppose	1%	1
Strongly oppose	1%	2
I don't know	5%	9
I do not want to answer this question	2%	4
Answered		**201**


2% Oppose
1% Oppose
1% Strongly Oppose
"Montana law should protect many businesses and types of companies from lawsuits being filed related to the coronavirus."
92% Support
75% Strongly Support
17% Somewhat Support

3. Consider the following 5 proposals. One requirement in common would be each business would have to be following the latest health guidelines issued by government officials. Now, please tell me if you would support or oppose each proposal.

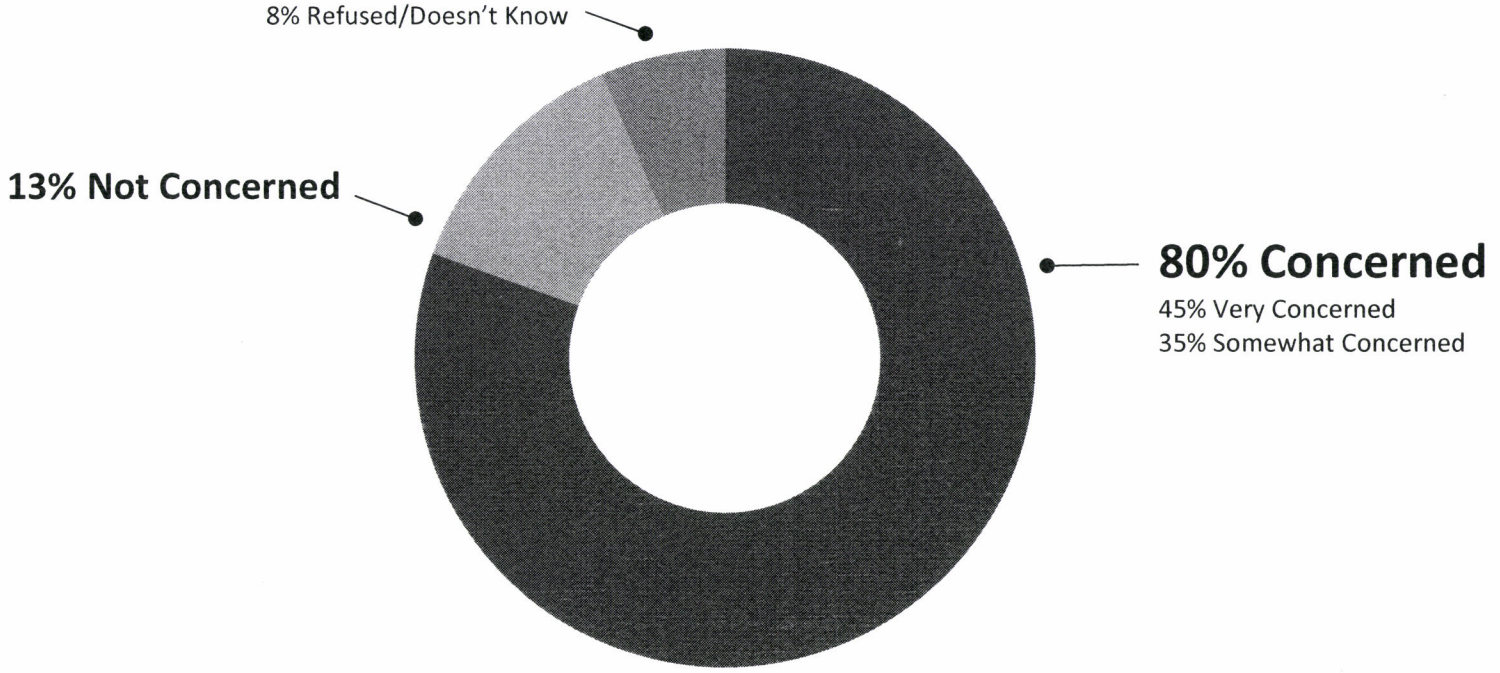
	Strongly support	Support	Oppose	Strongly oppose	I do not know	I do not want to answer this question
Protecting businesses like grocery stores and pharmacies, which have been allowed to stay open as essential businesses, from lawsuits related to the coronavirus.	75%	21%	0%	1%	3%	1%
As restaurants, stores and other businesses are allowed to open again, saying they cannot be sued by people who claim they contracted the coronavirus at that place of business unless the business was grossly negligent.	77%	20%	1%	1%	2%	0%
Protecting companies from employee lawsuits if they ask sick employees with a fever or other symptoms of coronavirus who want to work to instead stay home.	75%	14%	4%	3%	4%	1%
Protecting companies offering cleaning supplies as well as Montana manufacturers who have switched their daily operations in order to make hand sanitizer, soap, and other PPE from coronavirus lawsuits.	74%	21%	1%	1%	2%	2%
Protecting companies from employee lawsuits if the state or federal government asks these companies to provide health information about which employees have the coronavirus, are sick now, or have recovered from the virus.	65%	17%	6%	3%	6%	4%
					Answered	**199**
					Skipped	**2**


Protecting companies from employee lawsuits if the state or federal government asks these companies to provide health information about which employees have the coronavirus, are sick now, or have recovered from the virus.
9% Oppose
82% Support
Protecting companies offering cleaning supplies as well as Montana manufacturers who have switched their daily operations in order to make hand sanitizer, soap, and other PPE from coronavirus lawsuits.
2% Oppose
95% Support
Protecting companies from employee lawsuits if they ask sick employees with a fever or other symptoms of coronavirus who want to work to instead stay home.
7% Oppose
89% Support
As restaurants, stores and other businesses are allowed to open again, saying they cannot be sued by people who claim they contracted the coronavirus at that place of business unless the business was grossly negligent.
2% Oppose
97% Support
Protecting businesses like grocery stores and pharmacies, which have been allowed to stay open as essential businesses, from lawsuitsrelated to the coronavirus.
1% Oppose
95% Support
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

**Respondents saying 'don't know' or refusing to answer totaled 6% or less for each of the above questions.*

4. Considering the proposals you just read, are you concerned that unlike several other states, Montana has not done anything to address liability for employers even though Montana is opening earlier and faster than many other states?

Answer Choices	Responses	
Very concerned	45%	90
Somewhat concerned	35%	71
Not concerned	13%	26
I don't know	7%	13
I do not want to answer this question	1%	1
Other (please specify)		1
Answered		**201**



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Economic Affairs Interim Committee

66th Montana Legislature

SENATE MEMBERS
JASON ELLSWORTH
NATE MCCONNELL
FRANK SMITH
GORDON VANCE

HOUSE MEMBERS
DEREK HARVEY
JOSH KASSMIER
MARK NOLAND
VINCE RICCI, Vice Chair
SHARON STEWART PEREGOY, Chair
KATIE SULLIVAN

COMMITTEE STAFF
PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
FONG HOM, Secretary

July 22, 2020

Via Email

Dear Governor Bullock:

At its June 30-July 1 meeting the Economic Affairs Interim Committee (EAIC) discussed concerns about business liability if customers or employees become infected with COVID-19 and blame the business for contributing to that infection. Committee member Rep. Mark Noland asked the EAIC to follow up on a letter that he and Sen. Steve Fitzpatrick had sent to you in June, citing their concerns that businesses need assurance that neither customers nor employees would improperly place blame in the current pandemic. A June 10 *Flathead Beacon* article highlighted their concerns. See https://flatheadbeacon.com/2020/06/10/republican-lawmakers-request-liability-protections-businesses/.

The EAIC staff attorney reviewed actions taken by about a dozen states, many in the past 6 months, to provide immunity from damages to medical facilities or other businesses for COVID-19 services that were not grossly negligent. See https://leg.mt.gov/content/Committees/Interim/2019-2020/Economic-Affairs/Meetings/June-July2020/covid-business-liability-memo.pdf. The attorney also pointed out that 28-2-702, MCA, emphasizes that Montana's public policy is not to exempt "directly or indirectly ... anyone from responsibility for the person's own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent".

Recognizing these constraints, the Economic Affairs Interim Committee is requesting you, Governor Bullock, to determine what type of reassurance to businesses would best encourage resumption of operations without fear of facing lawsuits. Recognizing that the Governor has emergency powers to protect the public health as well as property, the members of the Committee urge consideration of waivers from liability, outright immunity, or a moratorium on COVID-19 lawsuits in situations under which a business is not grossly negligent, much as the Governor requested a stay on evictions during this unprecedented time.

As indicated by a Montana Chamber of Commerce survey taken in June 2020, 90% of the more than 200 businesses surveyed were in support of a Montana law that would protect many businesses from lawsuits filed in relation to the coronavirus. See https://leg.mt.gov/content/Committees/Interim/2019-2020/Economic-Affairs/Meetings/June-July2020/Chamber-CoronavirusBusiness-Liability-Survey.pdf.

Getting Montana businesses back in service, with appropriate precautions for workers and customers, is good for Montana. The EAIC urges the Governor to take actions that would reassure businesses of support that minimizes lawsuits and maximizes health, safety, and economic well-being for people and businesses in Montana.

Sincerely,

Rep. Sharon Stewart Peregoy, presiding officer
cc: Montana Chamber of Commerce

CI0425 0204fhxa.pdf

BUSINESS & LABOR
EXHIBIT NO. 5
DATE 01/08/2021
BILL NO. SB 65

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:59 AM
To: monttla@mt.net; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:59
Attachments: SB 65 Trial Lawyers Oppositon 1-7-21.pdf

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Montana Trial Lawyers Association
Name: AL SMITH
Email: monttla@mt.net
Phone: (406) 439-3124
City, State: HELENA
Written Statement: Our current law already provides protections for businesses and medical providers, which is why there have not been an explosion of COVID cases. Under current liability laws, businesses and medical providers are only required to do what is reasonable under the circumstances; thus, if they take reasonable steps, take responsibility, to protect workers, customers and patients, they will not face lawsuits.
Files: SB 65 Trial Lawyers Oppositon 1-7-21.pdf Testify via Zoom: Yes Zoom Method: Computer

DICK ANDERSON
CONSTRUCTION

COVID-19 Recommended Practices for All DAC Construction Jobsites

Personal Responsibilities

• It is critical that individuals NOT report to work while they are experiencing illness symptoms such as fever, cough, shortness of breath, sore throat, runny/stuffy nose, body aches, chills, or fatigue.
• Individuals should seek medical attention if they develop these symptoms.

Social Distancing

- Mask mandate per MT Governor's orders
- No large group meetings. CDC recommends that we avoid gatherings of 10+ people; and when meeting, that we keep a 6-foot distance between people. Perform meetings online or via conference call whenever possible.
- To limit the number of people attending jobsite JHA's and/or Toolbox Meetings (May need to hold several smaller meetings)
- On remote projects every effort will be made to have minimal passengers in vehicles (Car-Pooling not recommended with more than 1 other person)
- No hand-shaking and other contact greetings.

Jobsite / Office Practices

DAC Jobsite trailers will be closed to all subcontractors and venders until further notice.
Outside the DAC trailer will have the following CDC Posters- posted to communicate key CDC recommendations to all employees:

- DAC Closed trailer notice with site personal numbers
- Sick with COVID Fact Sheet
- Stop the Spread of Germs
- Coronavirus guidance
- DAC Social Distancing Visual Standards

Jobsite procedures

All projects will maintain one entrance and exit into site that will be managed by DAC Supervisor.

Meetings with workers such as safety meetings and foreman meetings will be conducted outside with a 6-foot distance being maintained.

We will daily remind all workers of the importance of safe practices and preventive measures related to the COVID-19 virus.

We will post good practice and prevention signage and we will clean and disinfect frequently touched objects and surfaces when possible.

If any employee comes to work, and it appears that this person may have the flu, flu like systems, and / or simply doesn't feel well **PLEASE HAVE THEM SENT HOME FOR THE DAY.** This also applies to any

subcontractors.

Other Best Practices

• Instruct employees to clean their hands often with an alcohol-based hand sanitizer that contains at least 60-95% alcohol, or wash their hands with soap and water for at least 20 seconds. Soap and water should be used preferentially if hands are visibly dirty.
• Provide soap and water and alcohol-based hand rubs in the workplace. Ensure that adequate supplies are maintained. Place hand rubs in multiple locations or in conference rooms to encourage hand hygiene.
• Do not congregate in lunch areas.
• Do not share tools.
• Do not share personal protection equipment (PPE).
• Sanitize reusable PPE per manufacturer's recommendation prior to each use.
• Ensure used PPE is disposed of properly.
• Utilize disposable gloves where appropriate; instruct workers to wash hands after removing gloves.
• Disinfect reusable supplies and equipment
• Identify specific locations and practices for daily trash such as: paper, hand towels, food containers, etc. Instruct workers responsible for trash removal in proper PPE/hand washing practices.
• Provide routine environmental cleaning (doorknobs, keyboards, counters, and other surfaces).
• Do not use a common water cooler. Provide individual water bottles or instruct workers to bring their own.
• Don't stack trades if possible.
• Utilize disposable hand towels and no-touch trash receptacles.
• Request additional/increased sanitation (disinfecting) of portable toilets.
• Avoid cleaning techniques, such as using pressurized air or water sprays that may result in the generation of bioaerosols.

Government Resources

CDC website: https://www.cdc.gov/coronavirus/2019-nCoV/index.html

COVID-19: CONSTRUCTION WORKER POTENTIAL EXPOSURE RISK ASSESSMENT

MARTEL CONSTRUCTION INC. SAFETY FIRST

As information regarding the COVID-19 evolves, the executive team will continue to update this document based on newly released information and regional health organization guidelines. These protocols apply to Martel Construction employees. For any questions regarding our COVID-19 policies or to report an issue, please contact Human Resources at hrdepartment@martelconstruction.com.

Coronavirus Disease (COVID-19) is primarily thought to spread person to person including between people who are in close contact with one another (within 6 feet), or through respiratory droplets produced when an infected person coughs and/or sneezes. There is a possibility that transmission can occur by touching a surface or object that has COVID-19 on it then touching your mouth, nose and/or eyes, but this is not thought to be the primary way the virus spreads.

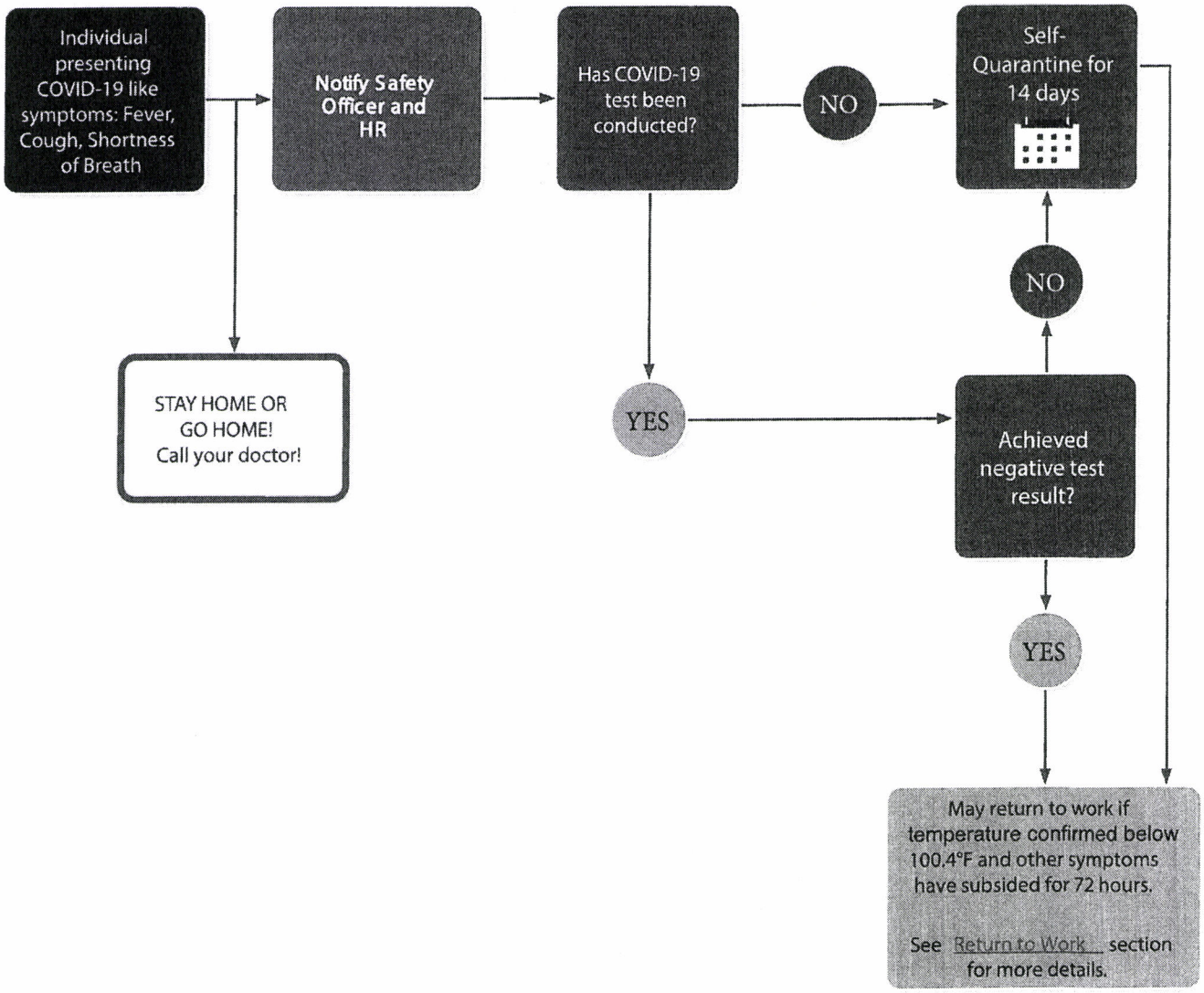
Epidemiological risk factors	Exposure category	Recommended Monitoring for COVID-19 (until 14 days after last potential exposure)	Work Restrictions for Workers
Prolonged close contact with a confirmed COVID-19 person. Brief interactions are less likely to result in transmission.			
Worker who is a CONFIRMED CASE or REASONABLY SUSPECTED CASE.	High	Active	Exclude from work until quarantine criteria is met[1].
Worker who has a household contact with a CONFIRMED CASE or REASONABLY SUSPECTED CASE.	High	Active	Exclude from work for 14 days after last exposure, or if becomes symptomatic until quarantine criteria is met[1].
Worker who was on the jobsite with a confirmed case or reasonably suspected case for the entire shift and in the same work location. Thorough investigation to be completed by senior management to determine full scope of exposure.	Medium	Active	Exclude from work for 14 days after last exposure.
Worker who was on the jobsite with a confirmed case or reasonably suspected case but in a different work location and did not interact with the confirmed/suspected case. For example, plumber working on level 1 of a building was the confirmed case, the painters on level 2 are at a low risk of exposure. Thorough investigation to be completed by senior management to determine full scope of exposure.	Low	Self-monitoring for symptoms	None.
If a household contact of a worker is under investigation for a possible exposure there is no risk to the jobsite or any crews. Only potential risk is if the actual worker on the jobsite has symptoms and is being tested for COVID-19.	Low/No identifiable risk	Self-monitoring for symptoms since community spread is known and restrict from work if symptoms start. No additional risk from this scenario other than general community risk.	None.
Handling shipments arriving from foreign countries.	No identifiable risk	Self-monitoring for symptoms since community spread is known and restrict from work if symptoms start. No additional risk from this scenario other than general community risk.	None.

Source: Dr. Cynthia Ellwood, Associates in Occupational + Environmental Health, LLC

MARTEL CONSTRUCTION INC. SAFETY FIRST

Possible Exposure... What to do?

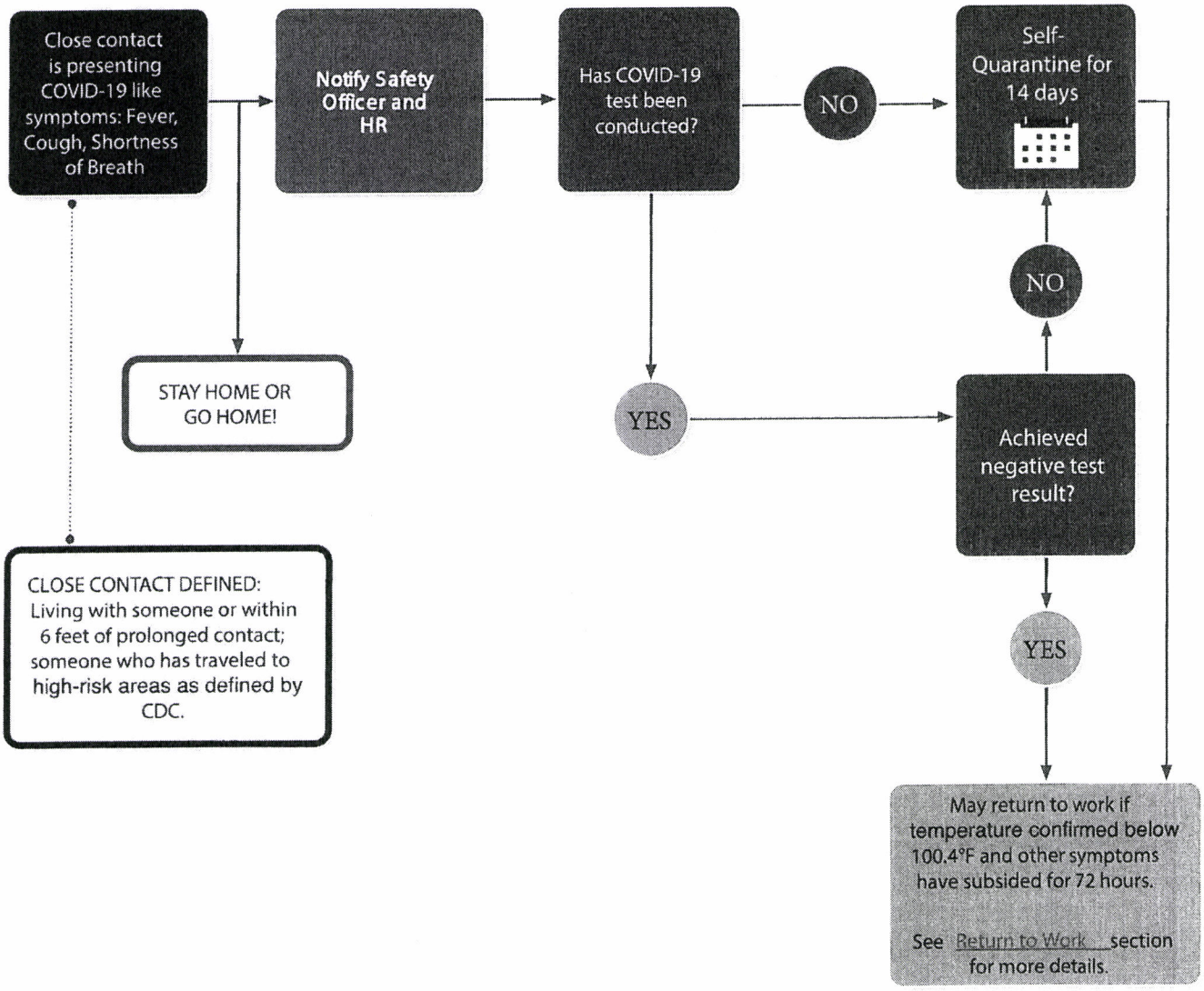
If you have COVID-19 or flu-like symptoms:


Individual presenting COVID-19 like symptoms: Fever, Cough, Shortness of Breath
Notify Safety Officer and HR
Has COVID-19 test been conducted?
NO
Self-Quarantine for 14 days
STAY HOME OR GO HOME! Call your doctor!
YES
NO
Achieved negative test result?
YES
May return to work if temperature confirmed below 100.4°F and other symptoms have subsided for 72 hours.
See Return to Work section for more details.

MARTEL CONSTRUCTION INC. SAFETY FIRST

Possible Exposure... What to do?

If you have had close contact with someone showing symptoms:

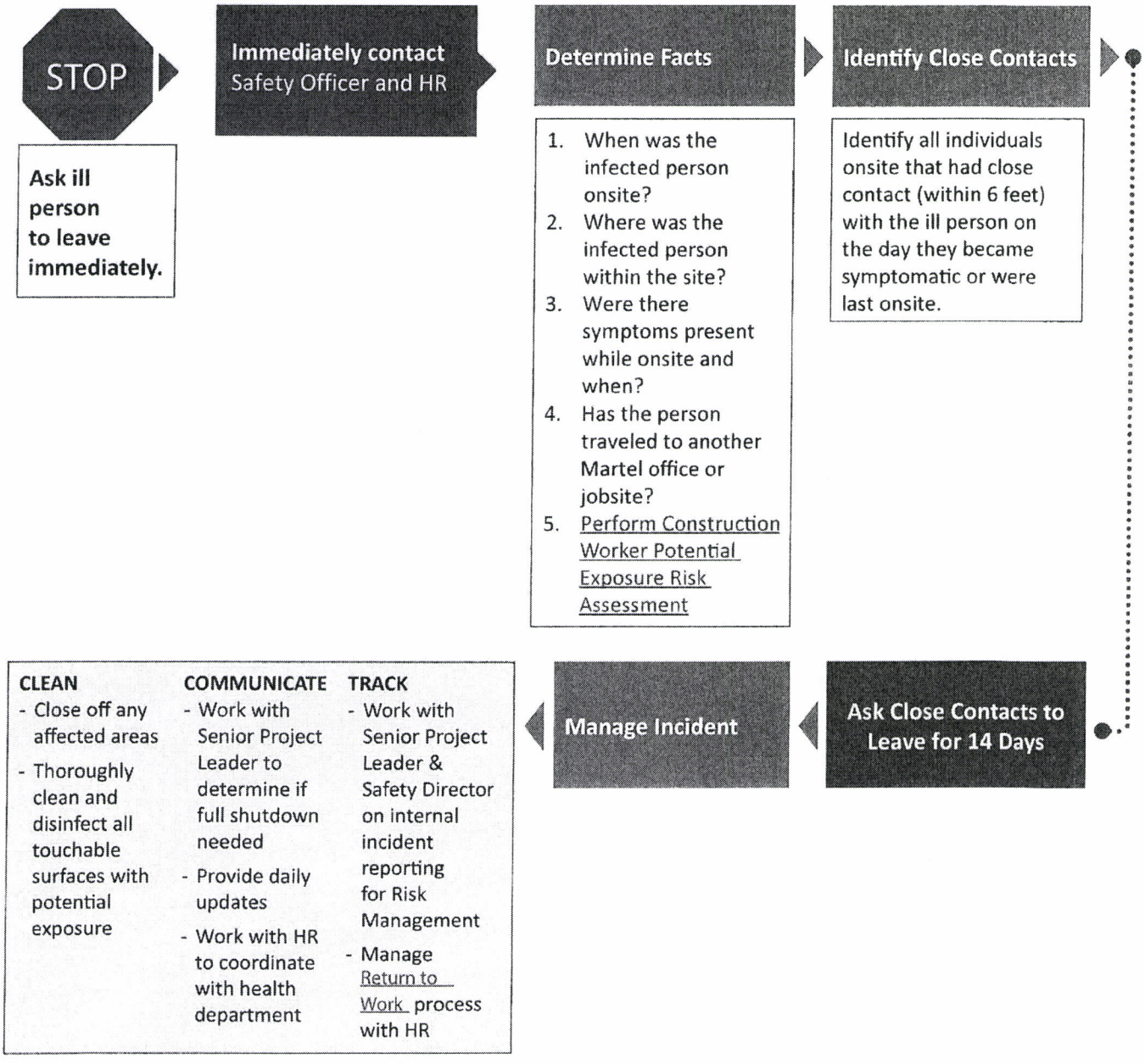

Close contact is presenting COVID-19 like symptoms: Fever, Cough, Shortness of Breath
Notify Safety Officer and HR
Has COVID-19 test been conducted?
NO
Self-Quarantine for 14 days
NO
STAY HOME OR GO HOME!
YES
Achieved negative test result?
YES
CLOSE CONTACT DEFINED: Living with someone or within 6 feet of prolonged contact; someone who has traveled to high-risk areas as defined by CDC.
May return to work if temperature confirmed below 100.4°F and other symptoms have subsided for 72 hours.
See Return to Work section for more details.

COVID-19: SUSPECTED OR
Confirmed Case Protocol

MARTEL CONSTRUCTION INC. SAFETY FIRST

Use the process below for someone who...

- » Tests positive for the COVID-19 virus
- » Has a test pending for the COVID-19 virus due to close contact in any form
- » Is informed by a medical professional that they likely have the COVID-19 virus
- » Has been exposed to someone with a confirmed or reasonably suspected case of COVID-19


STOP
Ask ill person to leave immediately.
Immediately contact Safety Officer and HR
Determine Facts
1. When was the infected person onsite?
2. Where was the infected person within the site?
3. Were there symptoms present while onsite and when?
4. Has the person traveled to another Martel office or jobsite?
5. Perform Construction Worker Potential Exposure Risk Assessment
Identify Close Contacts
Identify all individuals onsite that had close contact (within 6 feet) with the ill person on the day they became symptomatic or were last onsite.
Ask Close Contacts to Leave for 14 Days
Manage Incident
CLEAN
- Close off any affected areas
- Thoroughly clean and disinfect all touchable surfaces with potential exposure
COMMUNICATE
- Work with Senior Project Leader to determine if full shutdown needed
- Provide daily updates
- Work with HR to coordinate with health department
TRACK
- Work with Senior Project Leader & Safety Director on internal incident reporting for Risk Management
- Manage Return to Work process with HR

COVID-19: INTERIM GUIDELINES FOR CLEANING
and Disinfection at the Job Sites & Office

MARTEL CONSTRUCTION INC. SAFETY FIRST

First Steps After Persons are Presumed Positive or **Confirmed to have COVID-19:**

01 Close the project or office for 24 hours prior to cleaning.

02 Ventilate to increase air circulation.

03 Clean and Disinfect all touchable surfaces with potential exposure.

How to Clean/Disinfect:

Personal Protective Equipment Required:

Disposable Gloves

Safety Glasses with Side Shields

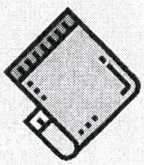
Disposable Garments or Long Sleeves

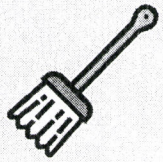
Hand Soap or Sanitizer

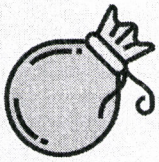
Cleaning Equipment Required:

Bleach

Water and Pail


Rags or Wipes


Mop


Garbage Bags

1. **Put on personal protective equipment (PPE).** Do not touch your face further.
2. Prepare bleach solution using a 3/4 cup bleach to one gallon water ratio.
3. Open windows and/or ventilate the area.
4. Thoroughly **clean all touchable surfaces with potential exposure**, including common surfaces.
5. Allow for **5 minutes of wet contact time** with bleach/disinfectant.
6. Put all used rags and mop heads into disposable garbage bag.
7. Remove gloves, using an inside-out technique, and throw into garbage bag.
8. Wash your hands thoroughly with soap and water for 20 seconds.
9. Remove any disposable clothing and throw into garbage bag.
10. Wash your hands again thoroughly with soap and water for 20 seconds.
11. Continue to ventilate the area.
12. The site may be reopened **after cleaning is complete.** Designate an entry and exit point to the project site or office, and hang posters warning that symptomatic personnel are not to enter the project to prevent a future shutdown.

COVID-19: Definitions Used in this Guidance

MARTEL CONSTRUCTION INC. SAFETY FIRST

DEFINITIONS

Self-monitoring means the worker should monitor themselves for fever and respiratory symptoms (e.g., cough, shortness of breath, sore throat)*. **Do not come to work if symptoms arise.**

Active monitoring means the state or local public health authority assumes responsibility for establishing regular communication with potentially exposed people to assess for the presence of fever or respiratory symptoms (e.g., cough, shortness of breath, sore throat)*.

Close contact for worker exposures is defined as follows:

a) Being within approximately 6 feet (2 meters), of a person with COVID-19 for a prolonged period of time (e.g., working with the patient for most of or all of a shift), or

b) Having unprotected direct contact with infectious secretions or excretions of the patient (e.g., being coughed on, touching used tissues with a bare hand).

EXPOSURE RISK CATEGORY

While body fluids other than respiratory secretions have not been clearly implicated in transmission of COVID-19, unprotected contact with other body fluids, including blood, stool, vomit, and urine might put a worker at risk of COVID-19 transmission.

Table above describes possible scenarios that can be used to assist with risk assessment. These scenarios do not cover all potential exposure scenarios and should not replace an individual assessment of risk for the purpose of clinical decision making or individualized public health management. Any public health decisions that place restrictions on an individual's or group's movements or impose specific monitoring requirements should be based on an assessment of risk for the individual or group. Companies, in consultation with public health authorities should use the concepts outlined in this guidance along with clinical judgment to assign risk and determine need for work restrictions.

- ***High-risk*** exposures refer to workers who have tested positive or had prolonged close contact with confirmed persons with COVID-19.
- *Medium-risk* exposures generally include workers who had contact with confirmed persons with COVID-19, but that contact was not prolonged close contact or contact with the confirmed cases body fluids.
- *Low-risk* exposures generally refer to very brief interactions with persons suspected to have COVID-19 or exposure to persons who have been in contact with a person suspected to have COVID -19 but are not having any symptoms themselves.

Workers with no direct contact with a confirmed case and no entry into active patient management areas who adhere to routine safety precautions do not have a risk of exposure to COVID-19.

Risk stratification can be made in consultation with the hospitals Infection Prevention team or public health authorities.

[1]GUIDELINES FOR REMOVAL FROM QUARANTINE

Time-since-illness-onset and time-since-recovery strategy (non-test-based strategy):

Persons with COVID-19 and have symptoms and were directed to care for themselves at home may discontinue home isolation under the following conditions:

- At least 3 days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); **and,**
- At least 7 days have passed since symptoms first appeared.
- Individuals with laboratory-confirmed COVID-19 who have not had any symptoms may discontinue home isolation when at least 7 days have passed since the date of their first positive COVID-19 diagnostic test and have had no subsequent illness

Test-based strategy (simplified from initial protocol) A test-based strategy is contingent on the availability of ample testing supplies and laboratory capacity as well as convenient access to testing. For jurisdictions that choose to use a test-based strategy, the recommended protocol has been simplified so that only one swab is needed at every sampling.

Persons who have COVID-19 who have symptoms and were directed to care for themselves at home may discontinue home isolation under the following conditions:

- Resolution of fever without the use of fever-reducing medications, **and**
- Improvement in respiratory symptoms (e.g., cough, shortness of breath), **and**
- Negative results of an FDA Emergency Use Authorized molecular assay for COVID-19 from at least two consecutive nasopharyngeal swab specimens collected ≥24 hours apart** (total of two negative specimens). See Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens from Persons Under Investigation (PUIs) for 2019 Novel Coronavirus (2019-nCoV) for specimen collection guidance.

Individuals with laboratory-confirmed COVID-19 who have not had any symptoms may discontinue home isolation when at least 7 days have passed since the date of their first positive COVID-19 diagnostic test and have had no subsequent illness.

These guidelines are developed based of the current CDC guidelines as of 3/18/2020. Since this situation is rapidly evolving, these policies and protocols are subject to change.

References

https://www.cdc.gov/coronavirus/2019-nCoV/index.html

https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html

https://www.osha.gov/Publications/OSHA3990.pdf

DATE: January 7, 2021

TO: Senate Business Committee

FROM: Al Smith, Montana Trial Lawyers, monttla@mt.net, 406-439-3124

RE: SB 65 - OPPOSED

The member attorneys of the Montana Trial Lawyers represent individual Montanans, their families and small businesses who have been injured or harmed by the actions or omissions of others. We work to assure that all Montanans are able to exercise their constitutional right of access to the courts to seek a "speedy remedy for every injury of person, property, or character" as guaranteed by Article II, Section 16 of the Montana Constitution.

We oppose SB 65 as an unnecessary abrogation and limitation of those rights. This bill is unneccessary, there has not been an explosion of COVID litigation – I'm aware of only one case in Montana involving malpractice, a nursing home in the Flathead. I'm not aware of any consumer or worker lawsuits at this point. My members have received more requests for assistance from businesses that are angry that their business interruption insurance claims are being denied.

Our current law already provides protections for businesses and medical providers, which is why there have not been an explosion of COVID cases. Under current liability laws, businesses and medical providers are only required to do what is reasonable under the circumstances; thus, if they take reasonable steps, take responsibility, to protect workers, customers and patients, they will not face lawsuits.

SB 65 essentially says that businesses and providers do not have to act reasonably or responsibly, and they can act unreasonably or irresponsibly and still not face any lawsuit to hold them accountable for the harms they may cause. It is not responsible to give businesses immunity when they unreasonably or irresponsibly expose their workers and consumers to COVID-19. It makes no sense that the main priority is to eliminate the rights of workers, consumers and patients.

We understand that the Governor has made this immunity bill a priority step towards rescinding the mask mandate. We do not see how providing immunity improves the health of our communities and therefore allow for rescinding the mask mandate.

We have specific concerns with specifc sections of the bill that we will address in testimony or further submissions. We understand that there are various amendments being proposed, and we hope that some of our specific concerns will be addressed by those amendments. Thank you for your consideration.

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:58 AM
To: LetThemComeHome@ghmail.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:57
Attachments: Wards of the State die without PPE.pdf

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: LetThemComeHome and institutionalized persons in M
Name: Laurie Little Dog
Email: LetThemComeHome@ghmail.com
Phone: (406) 338-3378
City, State: Bozeman, MT
Written Statement: My name is Laurie Little Dog and I one of hundreds of Montanans who have been collectively advocating for the Human Rights of prisoners who are being held at correctional facilities throughout the State of Montana.

We vehemently oppose Senate Bill 65.

In our extensive work in monitoring the circumstances of Covid-19 management within these institutionalized settings, reports of incarcerated persons not having access to simple things like CDC recommended 70% alcohol-based hand sanitizer, sponges that have abrasion in order to clean human crud off the the shower walls and floors, in-cell access to the sanitizing wipes, or even something as basic as toilet seat lids!

The Montana Department of Corrections has not done what is necessary to keep human beings protected from the COVID-19 virus. The conditions within the facilities have challenged the Eighth Amendment protections that we all are to be protected under protected under.

The Montana Department of Corrections received 4.3 million dollars of CARES Act funding yet incarcerated Montana citizens only received from the State prisons a total of (2) cloth masks, with no sanitizing soap to launder them in. As you can see in the attached photo, these single-layer masks are made out of the prison uniform fabric and contain no filter.

Many people have died from Covid-19 while in the custody of the State... not just those in prison but also in critical danger were those in places like Nursing Homes, the State Mental Health facility etc. Those who are under the care of these institutions cannot just go out and buy better masks or a can of Lysol and Clorox wipes. They remain at the mercy of what the prison staff will allow them access to. these items cannot be mailed in (although many have tried to go through the proper channels to get supplies into the facilities but those offers were denied.

The Department of Corrections Director and his colleagues reported to the Law and Justice Interim Committee repeatedly from March 2020 through September 2020. I encourage you to review the recordings of those updates by looking at the legislative meeting archives which are indeed available to the public.
https://leg.mt.gov/committees/interim/2019ljic/meeting-info/

Senate Bill 65 is not an appropriate bill for our future as it erases accountability for gross inaction, negligence disregard for human life.

I ask you to please vote NO on SB65.
Files: Wards of the State die without PPE.pdf Testify via Zoom: Yes Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 11:30 AM
To: butterflyjosh4@gmail.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 11:29

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Opening Doors
Name: Josh Butterfly
Email: butterflyjosh4@gmail.com
Phone: (406) 217-6518
City, State: Great falls
Written Statement: During the H1N1 outbreak the department of corrections drafted up a plan to combat another viruses should it hit the correctional institutions. It was discovered at that time that the prisons, jails, and other correctional secure facilities will be one of the major contributing factors of surrounding community outbreaks. This outbreak would be due to the corrections workers coming in and out of the institutions. During Bullocks mandate the cascade county detention center intentionally moved inmates to correctional facilities throughout Montana. Shortly after there was a spike in cases of the covid 19 with the surrounding communities spike in case as well. Being a ward of the state at the time of the H1N1 virus. The same nightmare is happening. This time is much worse. Accountable for government agencies such as the Department of corrections should not continue to be allowed to hide behind a bill that provides no accountability for those official, administrators, managers, lawyers, and all other personnel that played a role in allowing the covid 19 to reach beyond the facilities and infect the people in the surrounding communities. This bill has so many loop holes to allow governments official and appointees to be free form any wrong doing that allowed this virus to spread. The monies that where allotted to the department of corrections for the covid-19 relief need an audit and funds located that never made it to the intended recipients that money was supposed to protect. This bill need to have more clarity and transparency. And need to have accountability component for those that have violated mandates associated with he transfer of infected inmates.
Files:
Testify via Zoom: No
Zoom Method: N/A

BUSINESS & LABOR
EXHIBIT NO. 6
DATE 01/08/2021
BILL NO. SB 65

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 10:19 AM
To: mike.dennison@kxlh.com; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 10:18

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Informational Witness
Representing an Entity/Another Person: Yes
Organization: Montana Television Network
Name: Mike Dennison
Email: mike.dennison@kxlh.com
Phone: (406) 465-7476
City, State: Helena
Written Statement: I am covering the meeting as a member of the media. I am not appearing as a witness.
Files:
Testify via Zoom: No
Zoom Method: N/A

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, January 7, 2021 10:48 AM
To: sanderson@mtpca.org; LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-65_BUS_2021-01-08-09-00 Successfully Submitted on 01-07-21 10:48

Details:
Bill: SB-65: Revise civil liability laws (S) Business, Labor, and Economic Affairs - 2021-01-08 09:00 AM
Position: Informational Witness
Representing an Entity/Another Person: Yes
Organization: Montana Primary Care Association
Name: Stacey Anderson
Email: sanderson@mtpca.org
Phone: (406) 442-4228
City, State: Helena
Written Statement: MPCA anticipates monitoring this bill.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Any other type of documents such as:**
  - **@ Petitions {if any} Emails, all documents given to Committee Secretary after meeting.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Date: Friday, January 8, 2021
Place: Capitol

Time: 9:00 A.M.
Room: 422

BILLS and RESOLUTIONS HEARD:

SB 65 - Revise civil liability laws - Sen. Steve Fitzpatrick (R)
SB 66 - Generally revise the Montana Business Corporation Act - Sen. Steve Fitzpatrick (R)

EXECUTIVE ACTION TAKEN: None

Comments: None

SEN. Steve Fitzpatrick, Chair

MONTANA STATE SENATE

Roll Call

BUSINESS AND LABOR COMMITTEE

DATE: January 8, 2021

NAME	PRESENT	ABSENT/ EXCUSED
VICE CHAIR VANCE	✓	
VICE CHAIR BOLAND	✓	
SEN. ELLSWORTH		✓
SEN. FOX		✓
SEN. GAUTHIER	✓	
SEN. GILLESPIE	✓	
SEN. POPE	✓	
SEN. SMALL	✓	
SEN. SMITH	✓	
SEN. SWEENEY	✓	
CHAIRMAN FITZPATRICK	✓	
11 Committee Members		

MONTANA STATE SENATE
Visitors Register
SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Friday, January 8, 2021
SB 65 - Revise civil liability laws
Sponsor: **Sen. Steve Fitzpatrick (R)**

PLEASE PRINT

	Name	Representing	Support	Oppose	Info
5	E. J. Redding	MBWDA	X		
1	Bridger Mahlum	MT Chamber Commerce	X		
2	Henry Kriegel	Americans for Prosperity	X		
	~~Hallee English~~	~~Secretary of State~~	X		
4	Abigail St. Lawrence	MT Bldg Industry Assoc's MT Optometric Assn.	X		
	~~CONRAD EVARTS~~	~~CITIZEN~~			
3	Ronda Wiggers	NFIB/Helena Chamber	X		
	"	MT Coin Machine Operators	X		
10	~~Robyn Mohs~~	~~We the People~~		X	
7	David Passmi	Myself		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Friday, January 8, 2021
SB 66 - Generally revise the Montana Business Corporation Act
Sponsor: **Sen. Steve Fitzpatrick (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Bridger Mahlum	MT Chamber Commerce	X		
Kellee English	Secretary of State			X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Steve Fitzpatrick, on January 15, 2021 at 9:00 A.M., in Room 422 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Steve Fitzpatrick, Chair (R)
Sen. Gordon Vance, Vice Chair (R)
Sen. Jason W. Ellsworth (R)
Sen. Terry Gauthier (R)
Sen. Bruce Gillespie (R)
Sen. Jason D. Small (R)
Sen. Cary Smith (R)
Sen. Mark Sweeney (D)

Members Present by Zoom Video Conference:

Sen. Carlie Boland, Vice Chair (D)
Sen. Christopher Pope (D)
Sen. Mike Fox (D)

Members Excused: None

Members Absent: None

Staff Present: Olivia Hopkins, Committee Secretary
Clara Bentler, Remote Meeting Coordinator
Sonja Nowakowski, Legislative Branch
Erin Sullivan, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 90, 1/12/2021; SB 97, 1/12/2021; SB 102, 1/12/2021
Executive Action:	SB 65, SB 70

HEARING ON SB 90

Opening Statement by Sponsor:
09:00:51 Sen. Jason Small (R), SD 21, opened the hearing on SB90, Revise psychology licensing laws.

Proponents' Testimony:
09:03:25 Matt Kunts, executive director, National Alliance on Mental Illness
09:06:19 Stacey Anderson, Montana Primary Care Association (MPCA)
EXHIBIT(bus10a01)

09:08:39 John Doran, Blue Cross Blue Shield of Montana
09:09:55 Pat Noonan, Behavioral Health Alliance
09:10:46 Sara Boilen, Montana Board of Psychologists
EXHIBIT(bus10a02)

09:14:45 Todd Younkin, Department of Labor and Industry (DLI)
EXHIBIT(bus10a03)

Opponents' Testimony: None

Informational Testimony:
EXHIBIT(bus10a04)

Questions from Committee Members and Responses:
09:16:53 Sen. Boland
09:17:45 Mrs. Anderson, MPCA
09:17:56 Sen. Boland
09:18:13 Mr. Younkin, DLI
09:18:20 Jeff Sealey, Montana Board of Psychologists (MTBP)
09:18:59 Sen. Boland
09:19:16 Mr. Sealey, MTBP

Closing by Sponsor:
09:19:57 Sen. Small

09:20:22 Sen. Fitzpatrick

HEARING ON SB 102

Opening Statement by Sponsor:
09:20:47 Sen. Jason Small (R), SD 21, opened the hearing on SB102, Revise behavioral health licensing laws.

Proponents' Testimony:
09:24:33 Stacey Anderson, Montana Primary Care Association
EXHIBIT(bus10a05)

09:26:47 Matt Kuntz, executive director, National Alliance on Mental Illness
09:28:17 Pat Noonan, Behavioral Health Alliance

09:29:10 Dr. Malcolm Horn, Rimrock Foundation
EXHIBIT(bus10a06)

09:30:45 Todd Younkin, Department of Labor and Industry (DLI)
EXHIBIT(bus10a07)

09:32:43 Ann Truesdell, National Association of Social Workers Montana
EXHIBIT(bus10a08)

Additional testimony received:
EXHIBIT(bus10a09)

Opponents' Testimony: None

Informational Testimony:
09:34:25 Lucy Richards, DLI
EXHIBIT(bus10a10)

Questions from Committee Members and Responses: None

Closing by Sponsor:
09:35:01 Sen. Small

09:35:25 Sen. Fitzpatrick
09:35:33 Sen. Vance assumed the duties of the chair.
09:35:34 Chair Vance

HEARING ON SB 97

Opening Statement by Sponsor:
09:35:40 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB97, Remove sunset provision of active supervision laws for professional boards.

Proponents' Testimony:
09:38:14 Stacey Anderson, Montana Primary Care Association
EXHIBIT(bus10a11)

09:39:10 Matt Kuntz, executive director, National Alliance on Mental Illness
09:39:58 Todd Younkin, Department of Labor and Industry (DLI)
EXHIBIT(bus10a12)

Opponents' Testimony: None

Informational Testimony:
EXHIBIT(bus10a13)

Questions from Committee Members and Responses:
09:42:34 Sen. Pope
09:43:37 Mr. Younkin, DLI
09:44:37 Sen. Pope

Closing by Sponsor:
09:44:50 Sen. Fitzpatrick

09:45:03 Chair Vance
09:45:30 Sen. Fitzpatrick assumed the duties of the chair.
09:45:31 Chair Fitzpatrick

09:46:02 Recess
10:01:37 Reconvene

10:01:38 Sen. Ellsworth entered the meeting.
10:01:38 Chair Fitzpatrick

EXECUTIVE ACTION ON SB 65

10:02:00 **Motion:** Sen. Vance moved that **SB 65 DO PASS**.

10:02:13 **Motion:** Sen. Vance moved that **SB 65 BE AMENDED**.

Discussion:
10:02:16 Sen. Fitzpatrick
10:02:53 Sen. Boland
10:03:10 Sen. Fitzpatrick
10:06:23 Sen. Sweeney
10:06:42 Sen. Fitzpatrick
10:06:54 Sen. Gillespie
10:07:37 Sen. Pope
10:08:38 Sen. Fitzpatrick
10:09:13 Sen. Pope
10:10:39 Sen. Fitzpatrick
10:11:14 Sen. Boland
10:12:43 Sen. Fitzpatrick
10:13:29 Sen. Boland
10:14:28 Sen. Fitzpatrick

10:14:34 **Vote:** Motion carried 8-3 by roll call vote with Sen. Boland, Sen. Fox and Sen. Pope voting no.

10:15:30 **Motion/Vote:** Sen. Vance moved that **SB 65 DO PASS AS AMENDED.** Motion carried 8-3 by roll call vote with Sen. Boland, Sen. Fox and Sen. Pope voting no.

EXECUTIVE ACTION ON SB 70

10:16:34 **Motion/Vote:** Sen. Vance moved that **SB 70 DO PASS**. Motion carried unanimously by voice vote.

10:17:03 Chair Fitzpatrick

ADJOURNMENT

Adjournment: 10:17 A.M.

_____
Olivia Hopkins, Secretary

oh

Additional Documents:

EXHIBIT(bus10aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
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- **Roll Call Votes**
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Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Date: Friday, January 15, 2021
Time: 9:00 A.M.
Place: Capitol
Room: 422

BILLS and RESOLUTIONS HEARD:

SB 90 - Revise psychology licensing laws - Sen. Jason Small (R)
SB 97 - Remove sunset provision of active supervision laws for professional boards - Sen. Steve Fitzpatrick (R)
SB 102 - Revise behavioral health licensing laws - Sen. Jason Small (R)

EXECUTIVE ACTION TAKEN: SB 65, SB 70

Comments: None

SEN. Steve Fitzpatrick, Chair

MONTANA STATE SENATE

Roll Call

BUSINESS AND LABOR COMMITTEE

DATE: January 15, 2021

NAME	PRESENT	ABSENT/ EXCUSED
VICE CHAIR VANCE	✓	
VICE CHAIR BOLAND	✓	
SEN. ELLSWORTH		✓
SEN. FOX	✓	
SEN. GAUTHIER	✓	
SEN. GILLESPIE	✓	
SEN. POPE	✓	
SEN. SMALL	✓	
SEN. SMITH	✓	
SEN. SWEENEY	✓	
CHAIRMAN FITZPATRICK	✓	
11 Committee Members		

SENATE STANDING COMMITTEE REPORT

January 15, 2021

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **Senate Bill 65** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator Steve Fitzpatrick, Chair

And, that such amendments read:

1. Title, line 6.
Strike: "SAFE HARBOR"
Insert: "AFFIRMATIVE DEFENSE"

2. Title, line 8.
Following: "DEFINITIONS;"
Strike: "AND"
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE"

- END -

Committee Vote:
Yes 8, No 3
Fiscal Note Required __

SB0065003SC.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **Senate Bill 70** (first reading copy -- white) **do pass**.

Signed: _____
Senator Steve Fitzpatrick, Chair

- END -

Committee Vote:
Yes 11, No 0
Fiscal Note Required __

SB0070001SC.slk

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 01/15/2021 BILL NO 65 MOTION NO. 1
MOTION: Be Ammended

NAME	AYE	NO	Proxy
VICE CHAIR VANCE	✓		
VICE CHAIR BOLAND		✓	
SEN. ELLSWORTH	✓		
SEN. FOX		✓	
SEN. GAUTHIER	✓		
SEN. GILLESPIE	✓		
SEN. POPE		✓	
SEN. SMALL	✓		
SEN. SMITH	✓		
SEN. SWEENEY	✓		
CHAIRMAN FITZPATRICK	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 01/15/2021 BILL NO 65 MOTION NO. 2
MOTION: Do pass as Ammended

NAME	AYE	NO	Proxy
VICE CHAIR VANCE	✓		
VICE CHAIR BOLAND		✓	
SEN. ELLSWORTH	✓		
SEN. FOX		✓	
SEN. GAUTHIER	✓		
SEN. GILLESPIE	✓		
SEN. POPE		✓	
SEN. SMALL	✓		
SEN. SMITH	✓		
SEN. SWEENEY	✓		
CHAIRMAN FITZPATRICK	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Visitors Register
SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Friday, January 15, 2021
SB 90 - Revise psychology licensing laws
Sponsor: **Sen. Jason Small (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Stacey Anderson	MT Primary Care Assoc	X		
John Doran	BCBS MT	X		
PAT NOONAN	BHAM	✓		
Matt Kuntz	NAMI Montana	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Friday, January 15, 2021
SB 102 - Revise behavioral health licensing laws
Sponsor: **Sen. Jason Small (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Stacey Anderson	MT Primary Care Assoc	X		
PAT NOONAN	BHAM	✓		
Matt Kuntz	NAMI Montana	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Friday, January 15, 2021
SB 97 - Remove sunset provision of active supervision laws for professional boards
Sponsor: **Sen. Steve Fitzpatrick (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Stacey Ackerson	MT Primary Care Assoc	X		
PAT NOONAN	BHAM	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Mark Noland, on January 22, 2021 at 08:30 AM, in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Mark Noland, Chair (R)
Rep. Edward Buttrey, Vice Chair (R)
Rep. Katie Sullivan, Vice Chair (D)
Rep. Fred Anderson (R)
Rep. Willis Curdy (D)
Rep. Ross H. Fitzgerald (R)
Rep. Moffie Funk (D)
Rep. Steven Galloway (R)
Rep. Steve Gunderson (R)
Rep. Derek J. Harvey (D)
Rep. Denley M. Loge (R)
Rep. Ron Marshall (R)
Rep. Sara Novak (D)
Rep. Andrea Olsen (D)
Rep. Kerri Seekins-Crowe (R)
Rep. Katie Zolnikov (R)

Members Excused:

Rep. Kim Abbott (D)
Rep. Neil Duram (R)
Rep. Steve Gist (R)
Rep. Rynalea Whiteman Pena (D)

Members Absent: None

Staff Present:

Jordee Bomgardner, Committee Secretary
Jameson Walker, Legislative Branch
Cara Grewell, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 168, 1/18/2021; SB 65, 1/19/2021
Executive Action:	HB 63, HB 117, HB 149

HEARING ON HB 168

Opening Statement by Sponsor:

08:33:44 Rep. Bill Mercer (R), HD 46, opened the hearing on HB 168, Generally revise laws related to union fees.

EXHIBIT(buh15a01)
EXHIBIT(buh15a02)
EXHIBIT(buh15a03)
EXHIBIT(buh15a04)

Proponents' Testimony:

08:47:07 Henry Kriegel, Americans for Prosperity - Montana

Opponents' Testimony:

08:52:15 Amanda Curtis, Montana Federation of Public Employees (MFPE)
EXHIBIT(buh15a05)
EXHIBIT(buh15a06)

08:57:20 Adam Haight, Montana American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
09:01:26 Eric Anderson, Montana Nurses Association (MNA)
EXHIBIT(buh15a07)

09:04:12 John Forkan, Montana State Building and Construction Trades Council; International Brotherhood of Teamsters Local 2
09:04:53 Brian Reed, Montana Professional Firefighters
09:05:24 Kim Rickard-Smeltzer, Laborers Local 1686
09:06:45 John Johnson, International Union of Operating Engineers, Local 400 (IUOE)
09:07:11 D.B. Kenner, Brotherhood of Locomotive Engineers and Trainmen
09:07:43 Robert Shelton, Carpenters Union Local 82
09:08:17 Jack McBroom, International Brotherhood of Electrical Workers, Local 233 (IBEW)
09:08:50 Joel Worth, Carpenters Union Local 82
09:10:13 Luke Hoffer, International Brotherhood of Electrical Workers, Local 233 (IBEW)
09:10:45 Aaron Meaders, Federation of Montana State Prison Employees; Montana Federation of Public Employees (MFPE)
09:12:12 Kathy Clark, Montana Federation of Public Employees (MFPE)
09:13:00 Rep. Frazer
09:14:27 Richard Matiska, International Brotherhood of Electrical Workers, Local 233
09:14:49 Matt English, International Brotherhood of Electrical Workers, Local 233
09:15:31 Vicky Byrd, Montana Nurses Association (MNA)
EXHIBIT(buh15a08)

09:19:40 Amy Hauschild, Laborers Local 1686
EXHIBIT(buh15a09)

09:21:06 Timm Twardoski, American Federation of State, County and Municipal Employees (AFSCME)
EXHIBIT(buh15a10)

09:25:17 Alannna Wulf, Big Sky 55 Plus
09:26:21 Loni Conley, Montana Nurses Association (MNA)
EXHIBIT(buh15a11)

09:28:21 Jim Stone, self
09:30:13 Mick Wonnacott, Laborers Local 1686
EXHIBIT(buh15a12)

Informational Testimony: None

Questions from Committee Members and Responses:
09:31:10 Rep. Loge
09:31:36 Timm Twardoski, AFSCME
09:31:46 Rep. Gist joined the meeting.
09:32:16 Rep. Loge
09:32:35 Rep. Harvey
09:33:12 Amanda Curtis, MFPE
09:34:47 Rep. Marshall
09:35:30 Amanda Curtis, MFPE
09:36:00 Rep. Harvey
09:36:23 Jameson Walker, Legislative Services Division (LSD)
09:36:40 Chair Noland
09:37:05 Rep. Mercer
09:37:50 Chair Noland
09:41:12 Amanda Curtis, MFPE
09:41:42 Chair Noland
09:45:19 Rep. Mercer
09:46:01 Rep. Loge
09:46:24 Rep. Mercer
09:47:31 Rep. Loge
09:47:54 Rep. Mercer
09:48:44 Rep. Seekins-Crowe
09:49:27 Amanda Curtis, MFPE
09:51:00 Rep. Marshall
09:53:52 Amanda Curtis, MFPE

Closing by Sponsor:
09:54:20 Rep. Mercer

09:58:03 Recess
10:11:25 Reconvened

HEARING ON SB 65

Opening Statement by Sponsor:
10:12:52 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 65, Revise civil liability laws.

Proponents' Testimony:
10:32:00 Todd O'Hair, Montana Chamber of Commerce

10:34:26 Alan Olson, Montana Petroleum Association
10:35:09 Henry Kriegel, Americans for Prosperity - Montana
10:38:24 Rhonda Wiggers, Nation Federation of Independent Business (NFIB)
10:41:35 Stewart Doggett, Montana Lodging and Hospitality Association (MLHA)
10:42:42 Abigail St. Lawrence, Montana Building Industry Association (MBIA), Montana Optometric Association
10:46:44 Jessie Luther, Montana Hospital Association (MHA), Rocky Mountain Power (RMP), Talen Energy, Idaho Forest Group (IFG), Hospitality and Development Association of Montana
10:48:43 Aimee Grmoljez, Montana Bankers Association (MBA)
10:51:10 Jay Bodner, Montana Stockgrowers Association (MSGA), Montana Cattlewomen (MCW)
10:52:39 Gary Wiens, Montana Electric Cooperatives Association
10:53:45 Dan Brooks, Billings Chamber of Commerce
EXHIBIT(buh15a13)

10:54:34 Justine Cowdrey Palmer, Montana Tavern Association (MTA), Gallatin County Beverage Licensed Association
10:57:00 Tammy Johnson, Montana Mining Association (MMA)
11:00:32 Rachel Cone, Montana Farm Bureau Federation (MFBF)

Opponents' Testimony:
11:03:59 Darin Gaub, self
11:06:28 David Allen, self
EXHIBIT(buh15a14)

11:12:26 Conrad Evarts, self
EXHIBIT(buh15a15)

11:15:52 Jennifer Martin, self
EXHIBIT(buh15a16)

11:17:39 Holly Russell, self
11:18:46 Brooke Carlson, self
11:19:44 Brandie Mercer, self
11:21:28 Cindi Hamilton, self
11:26:32 Fred Havens, self
11:28:38 Lisa Hjelmstad, self
EXHIBIT(buh15a17)

11:33:40 Raye Newmeyer, self
11:34:14 Charlotte Sanborn, self
11:35:30 Marie Wyrock, self
11:38:35 Dianna Koester, self
11:40:42 Al Smith, Montana Trial Lawyers Association (MTLA)
EXHIBIT(buh15a18)

11:43:11 Michelle Zizian, self
11:45:08 Colleen Wulf, Big Sky 55 Plus

11:48:14 Steve Harman, self
EXHIBIT(buh15a19)

Informational Testimony: None

Questions from Committee Members and Responses:
11:51:03 Rep. Gunderson
11:52:24 Sen. Fitzpatrick
11:53:33 Rep. Gunderson
11:53:38 Rep. Marshall
11:54:53 Sen. Fitzpatrick
11:55:29 Rep. Seekins-Crowe
11:55:58 Sen. Fitzpatrick
11:57:53 Vice Chair Sullivan
11:58:58 Sen. Fitzpatrick
12:00:50 Rep. Loge
12:01:10 Sen. Fitzpatrick
12:01:44 Rep. Olsen
12:05:30 Al Smith, MTLA
12:06:34 Rep. Novak
12:07:29 Sen. Fitzpatrick
12:08:10 Rep. Gist
12:08:37 Sen. Fitzpatrick
12:11:28 Rep. Harvey
12:12:01 Al Smith, MTLA
12:14:27 Rep. Curdy
12:15:25 Al Smith, MTLA
12:17:56 Rep. Funk
12:18:33 Al Smith, MTLA
12:20:36 Rep. Galloway
12:21:26 Sen. Fitzpatrick
12:23:20 Rep. Gunderson
12:28:36 Sen. Fitzpatrick
12:30:21 Rep. Loge
12:30:49 Sen. Fitzpatrick
12:31:12 Chair Noland
12:31:47 Sen. Fitzpatrick
12:32:52 Rep. Olsen
12:37:11 Steve Harman, Self

Closing by Sponsor:
12:39:12 Sen. Fitzpatrick

EXECUTIVE ACTION ON HB 63

12:41:47 **Motion:** Rep. Harvey moved that **HB 63 DO PASS**.

12:42:34 **Motion:** Rep. Harvey moved that **HB 63 BE AMENDED**.
EXHIBIT(buh15a20)

Discussion:
12:42:46 Jameson Walker, Legislative Services Division (LSD)
12:44:21 Vice Chair Sullivan
12:44:38 Jameson Walker, LSD

12:45:26 **Vote:** Motion carried unanimously by voice vote. Rep. Abbott, Rep. Duram and Rep. Whiteman Pena voted by proxy.

12:46:02 **Motion/Vote:** Rep. Harvey moved that **HB 63 DO PASS AS AMENDED**. Motion carried unanimously by voice vote. Rep. Abbott, Rep. Duram and Rep. Whiteman Pena voted by proxy.

EXECUTIVE ACTION ON HB 117

12:46:41 **Motion:** Rep. Harvey moved that **HB 117 DO PASS**.

12:47:18 **Motion:** Rep. Harvey moved that **HB 117 BE AMENDED**.
EXHIBIT(buh15a21)

Discussion:
12:47:46 Jameson Walker, LSD
12:48:30 Rep. Olsen

12:48:44 **Vote:** Motion carried unanimously by voice vote. Rep. Abbott, Rep. Duram and Rep. Whiteman Pena voted by proxy.

12:49:04 **Motion:** Rep. Harvey moved that **HB 117 DO PASS AS AMENDED**.

Discussion:
12:49:12 Rep. Olsen

12:49:45 **Vote:** Motion carried 19-1 by roll call vote with Rep. Olsen voting no. Rep. Abbott, Rep. Duram and Rep. Whiteman Pena voted by proxy.

EXECUTIVE ACTION ON HB 149

12:51:07 **Motion:** Rep. Harvey moved that **HB 149 DO PASS**.

12:52:04 **Motion:** Rep. Harvey moved that **HB 149 BE AMENDED**.
EXHIBIT(buh15a22)

Discussion:
12:52:39 Jameson Walker, LSD

12:52:48 **Vote:** Motion carried unanimously by voice vote. Rep. Abbott, Rep. Duram and Rep. Whiteman Pena voted by proxy.

12:53:10 **Motion:** Rep. Harvey moved that **HB 149 BE AMENDED**.
EXHIBIT(buh15a23)

Discussion:
12:53:34 Jameson Walker, LSD

12:54:57 **Vote:** Motion carried 19-1 by voice vote with Rep. Galloway voting no. Rep. Abbott, Rep. Duram and Rep. Whiteman Pena voted by proxy.

12:55:24 **Motion:** Rep. Harvey moved that **HB 149 DO PASS AS AMENDED**.

Discussion:
12:55:46 Vice Chair Sullivan
12:55:55 Jameson Walker, LSD

12:55:56 **Vote:** Motion failed 9-11 by roll call vote with Rep. Anderson, Rep. Duram, Rep. Fitzgerald, Rep. Gist, Rep. Gunderson, Rep. Harvey, Rep. Marshall, Rep. Noland and Rep. Seekins-Crowe voting aye. Rep. Abbott, Rep. Duram and Rep. Whiteman Pena voted by proxy.

12:57:38 **Motion/Vote:** Rep. Harvey moved that **HB 149 BE TABLED**. Motion carried unanimously by voice vote. Rep. Abbott, Rep. Duram and Rep. Whiteman Pena voted by proxy.

ADJOURNMENT

Adjournment: 12:57:57

_____
Jordee Bomgardner, Secretary

jb

Additional Documents:

EXHIBIT(buh15aad.pdf)

EXHIBIT 13
DATE 1-22-2021
SB 65

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Wednesday, January 20, 2021 11:04 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-20-21 11:03

Details:
Bill: SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Billings Chamber of Commerce
Name: Daniel Brooks
Email: daniel@billingschamber.com
Phone: (406) 580-8560
City, State: Billings
Written Statement: Good Morning Mr. Chair and Members of the Committee,

My name is Dan Brooks and I represent the Billings Chamber of Commerce. We encourage a Do Pass on Senate Bill 65.

From the start of this pandemic, our businesses have done their best to do the right thing and protect employees, customers, and communities. When the Phase 1 guidelines went into place, our business community stepped up and largely followed the governor's directives. As part of the Open & Safe campaign, we hosted large virtual town halls and smaller industry roundtables, connecting businesses to the county health officer and Governor's Office because our businesses are genuinely interested in knowing how to do the right thing.

A survey of our chamber membership in November showed 78% believe wearing a mask is important and 88% believe physical distancing is important. Nine months in, our businesses continue to do the right thing, despite the hardship and losses they continue to suffer. We need to make sure that we protect that good behavior--to incentivize continued adherence to best practices. Senate Bill 65 and it's safe harbor protection achieves this.

For that reason, we ask you to vote yes on Senate Bill 65. Thank you to the sponsor and everyone working hard on this issue and thank you for your time.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

EXHIBIT 14
DATE 1-22-2021
SB 65

OBSERVATIONS AND QUESTIONS

SB65 Amended Version 2 – January 21, 2021

My name is David Allen of the Passieri family. I represent more than one million people of Montana. I am a Montana real estate broker. I endorse property rights, real and private. I am an accredited journalist and hold a press pass. In flesh, I claim sovereignty under the true sovereign, God almighty.

I oppose SB65 for the following 10 reasons which are a sample but not inclusive of all the reasons for which I oppose this bill.

1. I oppose SB65 as this Business Liability Bill will turn Emergency Mandates into Law for the next 10 years.

2. The very preamble, line 13 states that "COVID-19 adversely affected Montana's economy and the rights of Montana's citizens". The actions of the Montana Dept of Public Health and Human Services continues to unlawfully and adversely affect the people of Montana by disallowing medical privacy, by enforcing an unnecessary, unhealthy, unconstitutional mask-mandate and by enforcing Martial Law provisions through "emergency actions".

3. I oppose SB65 for lack of integrity. Governor Gianforte announced he would repeal the mask mandate only when the legislature passed a bill that he can sign into law protecting businesses from frivolous lawsuits. However, the Big Sky Policy Institute pointed out that there is literally no reason whatsoever to provide a business liability waiver to Montana businesses because there have been zero lawsuits against businesses in Montana over covid-19 exposure. Furthermore, Al Smith with Montana's Trial Lawyers Association testified in opposition to SB65 on January 8, 2021 claiming that there are no frivolous lawsuits in Montana. I oppose SB65 because Section 6 admits that in order to receive immunity from civil liability lawsuits, the people of Montana are required to obey the very mandates that Governor Gianforte wants to repeal. All premises are affected including any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose. **Isn't it true that SB65 shifts civil liability to all the people of Montana where no such liability currently exist?**

4. I oppose SB65 as in my view, a medical police state is established with the newly proposed Public Health Guidance as defined in Section 1, Subsections 7(a) – 7(f) which "includes guidance related to covid-19 issued by the following: a) Centers for Disease Control (CDC); b) Medicare and Medicaid; c) OSHA; d) office of the governor; e) a state agency, including the dept of public health and human services; f) a local government including a local government health dept or local government board of health". All the people of Montana will be forced to follow the decisions of local, unelected health boards and decrees outside of the state, or risk being sued whereas previously the people of Montana were free to ignore them. **Why is SB65 necessary as it accomplishes precisely the opposite of what the governor publicly promotes, protection against frivolous lawsuits?**

5. I oppose SB65 which attempts to define a virus in which even the Centers for Disease Control (CDC) admit has never been successfully isolated. Section 1, Subsection 1 defines "Covid-19 as SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by SARS-CoV-2 or a virus mutating from it"- the conditions. Approximately 70% of the PCR test results give a false positive due to ineffective covid-19 viral isolation. And a recent CDC report reveals only 6% of nationwide deaths reported from approximately January through October 2020 were isolated to covid-19 deaths and that the remaining 94% of deaths had 2.6 co-morbidities associated with death. **Where is the proof of an emergency and why such a broad definition of Covid-19? Where is the certainty that this bill guarantees our right to free assembly, free speech and freedom of religion?**

6. I oppose SB65 as this bill incentivizes alleged medical malpractice by granting immunity for the following: Section 1, Subsection 8(b) "Qualified product means and includes medical devices, equipment and supplies used or modified for an UNAPPROVED use...."; Section 1, Subsection 8(c) "medical devices, equipment, and supplies used OUTSIDE OF THEIR NORMAL USE..."; Section 1, Subsection 8(d) "medications used to treat covid-19, including medications prescribed or dispensed FOR OFF-LABEL USE to attempt to treat covid-19"; Section 1, Subsection 8(e) tests to DIAGNOSE or DETERMINE IMMUNITY to covid-19; Section 1, Subsection 8(f) "a component of an item described in Section 1 Subsections 8(a) – 8(e). **How does this qualified product immunity protect the constitutional rights and civil liberties of the people of Montana? What benefit do these qualified product protections guarantee to the people of Montana?**

7. I oppose SB65 as this bill incentivizes BAD BEHAVIOR and alleged MEDICAL MALPRACTICE by granting IMMUNITY to Health Care Providers for the following: Section 4, Subsection (1) immunity is granted upon acts or omissions while providing health care to individuals with a condition UNRELATED to covid-19 when those acts or omissions support the response to covid-19, including the following: (a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or ALTERING THE DIAGNOSIS or treatment of an individual in response to a federal or state statue, regulation, order, or public health guidance; (b) diagnosing or treating the patient OUTSIDE the normal scope of the health care practitioner's license or practice; (c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an UNAPPROVED use; (d) conducting tests or providing treatment to and individual OUTSIDE the premises of a health care facility; (e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that OTHERWISE WOULD HAVE BEEN REQUIRED in the absence of covid-19; (f) acts or omissions undertaken by a health care provider relating to the use or NONUSE of personal protective equipment. In summary and per lines 15 & 16 of SB65'S preamble states: "the Legislature believes it is necessary to enact legislation to establish standards for IMPOSING LIABILITY and to PROVIDE DEFENSES FOR CLAIMS relating to COVID-19". We have established this bill shifts liability to all the people of Montana, however, simultaneously it gives unprecedented civil liability immunity and defenses to a pharmaceutical company, medical manufacturer and health care provider

establishment. **Isn't SB65 really a medical company lobbyist dream-come-true? What are the financial gains purported behind this bill? Is there any truth to the rumored $800 million dollar Montana windfall should this bill be passed into law?**

8. I oppose SB65 Section 5, Subsection (2) continues with ridiculous health care industry related immunities by stating: "A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 IS NOT liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a FAILURE TO PROVIDE PROPER INSTRUCTION or SUFFICIENT WARNINGS unless the person caused the personal injury, death or property damage through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort, in other words, did not comply to the existing covid-19 mandate guidance. Civil liberties and protections founded in the Montana constitution, Article 2, Section 16 for a speedy trial are circumvented. **How does this protect the people of Montana from frivolous lawsuits?**

9. As stated earlier, ZERO Montana lawsuits against a premises owner for alleged or potential cause of covid-19 infection exists. Section 2 Liability, Section 3 Premises Owner's Duty of Care and Section 6 Affirmative Defense each make it clear that civil liability is shifted to all the people of Montana, which said liability is currently non-existent. I oppose SB65 for essentially the shift of liability is clear and paraphrased as follows: a person may not bring or maintain a civil action alleging exposure or potential exposure to covid-19 UNLESS the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort by not choosing to follow mandates defined by Public Health Guidance and decrees outside of the state. **Where is the proposed bill to require the re-opening of our great state and defending our God given inheritance to a strong immunity and a more perfect unity with true health, alternative therapeutics, based upon other successes proven to exist in other countries?**

10. In final summary, I oppose SB65 as in my view, this bill eliminates any creative, free market Montana solution that is attempting to naturally co-exist today in which to creatively neutralize the ongoing covid-19, fear-induced, commerce crushing pandemic. Montana commerce must commence and incentives to become healthier, happier and productive should be our focus. By default, this bill aims to impose a medical police state, essentially play along to get along or potentially face civil liability. Simultaneously, SB65 will succeed to further reduce free-market societal input. Free market enterprise provide the appropriate mechanisms to properly allocate resources which in turn result in more competitive consumer choices which no longer seem to exist today in our health care provider systems. **Who in this room can honestly brag about their recent health care provider experience? What incentive to improve consumerism exists with an artificial, government induced medical police state market driven health care system?** A vote for SB65 is a vote to continue government induced domestic terrorism through anti free market medical tyranny. I will not grant my tacit agreement.

EXHIBIT 15
DATE 1-22-2021
SB 65

Chairman - "it's easy to be civil when you haven't been wiped out

Opposing SB 65

How many of you own a business licensed by a county health department?

I do. I own a small campground that's a community service for mountain bike campers from around the world on the West side of Helena. It's a community service I do for the Helena community and not my main business. Long before COVID, licensing this little campground gave me insight into how clunky, confused and ineffective the Lewis and Clark County Health Department is. Watching them fumble everything from communication to contact tracing in their response to COVID-19 is exactly what I expected. This bill seems to be written with the assumption that our county health departments are competent.

I appreciate the effort by Mr. Fitzpatrick to reduce liability for my wife, who is a nurse, and myself who owns this little campground along with rental properties. But putting us further under the thumb of unelected officials that have a track record here of threatening, punishing and bullying business owners makes me uneasy. We're a people that gives the authority to legislate only to elected bodies such as this. I understand there is legislation to correct the accountability problem of county health departments. But this bill as well needs to address the issue that county health departments are staffed by people with political agendas and varying levels of competence. Staff that aren't answering to the people in the communities they have authority over. This is leading to a great deal of division in our communities

after talking to him in the hall I realize I'll need to close.

and arbitrary destruction of our businesses. A perfect example is how uneasy I am testifying right now. Lewis and Clark County bureaucrats, from roads to planning to the health department let you know there will be consequences if I speak out. I'm happy to give specific examples upon request. I anticipate retribution for this testimony.

I oppose SB 65 in the current form. Only elected officials should be allowed to implement wide sweeping regulations. This isn't hard on the county level. For good or bad our county commissioners meet twice a week. The county health department could supply recommendations to the county commissioners to be approved. We need protection from SB65 but it.

One last thing, I've attempted to read the bill a few times. Not being a legal scholar I'm not 100% sure what it all means. But in the case of my campground, it is set up for self check in. As I said, it isn't a moneymaker. It's just a place for the bicyclists that visit Helena to rest. If I'm expected to enforce any sort of directives this summer I'll have to close. I can't afford to be out there 24/7 or hire someone to do so. My guests have their own thoughts on COVID. Some are scared. Some are not. Their actions reflect the information they've consumed and are varied.

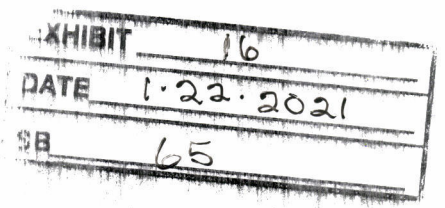
In conclusion, I have asthma, I survived a brutal bout of COVID-19. I have every legal immunization available as a result of a career involving 35 years of global travel. I'm not a denier, BUT We need to bring down temp on Covid and follow the science. It's been hyped.

Conrad Evarts
59602

Bill sponsor uses words "regulation" and "law" interchangably.

(406) 475-4994

Jennifer Martin
406-600-3661
jenniferemartin82@
gmail.com



Chairman Noland, members of the committee,

A few months ago, my 95-year-old Grandma fell, resulting in head trauma, more than 10 stitches, a broken nose & scraped up arms. She suffers from late-stage dementia and requires constant supervision. When my uncle brought her to the Emergency Department he was not allowed to accompany her even into the waiting room. Hospital staff did not ask him any questions about her

Jennifer Martin
406-600-3661

medical history or current medications. She was left alone in the waiting room for 4 hours during which time she was extremely frightened, unaware of her situation & required to wear a mask over her broken nose, which added to her pain. This is extremely irresponsible and dangerous treatment, and it is crucial for patients that providers need to be held accountable for substandard care. I ask that you please amend this bill to strike sections 4 & 5.

Thank you.

Jennifer Martin
406-600-3661

EXHIBIT 17
DATE 1-22-2021
SB 65

Thank you for taking the time to consider my position as a small business owner and member of the voting public on this bill. I intend to be present tomorrow to testify on this matter as well, but putting together some pieces to consider today. Thank you for taking the time to consider my thoughts.

A couple of points:

1) This bill mandates that businesses now in addition to paying attention to their respective ethical guidelines and practices of their profession, they will now also be required to paying attention to 6 more agencies with ever changing guidance on issues of public health. We as business owners in order to avoid liability, are to become the enforcers of that guidance within their places of businesses. All without the benefit of factual, tested, scientific, but reactive emergency responses without actual factual information, fair hearing, due process or the thoughtful establishment of wise decisions and common sense.

Somehow, as a business owner directly working with patients 16 hours a day, I must now also take the time to read the latest information from health departments, the CDC, or any of the other listed agencies and then immediately change my practices, adjust hours, accommodations, enforce more distancing, engage in medical procedures (health checks, questions, etc....) or respond in any other way they recommend, All this against Constitutional protections and freedoms of the paying public. And that only if I am willing to do this, am I actually protected from liability. So let me get this squared away,

You are offering to protect me as a business owner from liability if I am willing to enact "guidance" that violates the inalienable rights of other? But if I am a business owner who trusts the public to use their common sense and conduct themselves in a manner fitting of the respect for their humanity as I also have, I will not be protected from lawsuit? And if I misapply or misinterpret unintentionally the guidance and that happens to harm someone, I am protected; but if I want to leave public health guidance in the hands of the public health professionals for interpretation and application, I am not protected from liability?

Between 2/29/2020 and 1/20/2021 there have been more than 180 issued guidance documents issued by the CDC alone related to public health measures and directives or recommendations. That is not 180 recommendations but 180 papers on recommendations. Each set of recommendations or "guidance" may contain tens of recommendations. Most pertain to Coronavirus. Please keep in mind that there are multiple strains of coronovirus and that is has ben around for hundreds of years. We have never legislated behavior regarding a virus before with public health recommendations. Why now?

These more than 180 CDC documents pages long are PUBLIC HEALTH recommendations, that each member of the public may take advantage of or educate themselves about in order to make the best decisions for themselves. To now require businesses make those decisions for each individual that comes into their place of business in order to avoid lawsuit is "force or coercion at best. When did government get awarded the privilege to bully, threaten or intimidate businesses to "do this or face lawsuit"?

Your task as I see it, if I understand the constitution is to protect the interests of property owners, the property of all citizens. The only way you take do that is to avoid over stepping your bounds to leave business property owner interest and the interest of citizens as owners of their own body, the decision to conduct themselves as a citizen without imposition of laws for every medical condition or strain that may come down the pike. We start with Covid 19 and then leave it open for the next strain and the next guidance that is a slippery slope.

2) In section 4 and 5 of this bill are specific protections for medical practitioners against malpractice issues that in fact are a blatant disregard of medical practice standards. To give a blanket walk to practitioners to follow ethical guidelines of practice is unconsciousable. Some examples: they are allowed or guided to close practice, not see patients or delay care whenever a public health guidance is issued to do so regardless of patient needs. Early on, i had patients waiting for heart surgery, in need of wound care, and seeking life saving treatment, but they were prevented from doing so and that is something that we are going to protect physicians from liability for because they are unwilling to provide patient care over the guidance of some bureaucrat or government official being given orders or mandates from the World Economic Forum or the World Health Organization whose job it is to sit in an office making up guidance? Have we lost faith in physicians being able to make decisions based on the ethics of their practice? And are we going to make physicians liable for following those guidelines instead of the organizations governing public health. These are two separate areas of practice.

There is much also to be said for Section 5. Much of this beyond the ability to respond to the issue of general business practices. I would encourage the removal of Sections 4 and 5 completely from this bill. Although if there is a bill introduced regarding Section 4 I will be back to talk about the medical practice issues that I have seen as a medical professional working with more than 80 patients connected with other medical professions each week. I have been appalled at what doctors have done all in the name of CDC guidance including the delay of care as discussed, the refusal to write medical exemptions for masking out of fear of being targeted by the the CDC even though they know masking is causing harm, the wearing of PPE for a week at a time irregardless of patients being served in emergency or general practice clinics, the separation of children from parents at birth based on faulty testing (confirmed by WHO and CDC itself in the PCR guidelines), a failure to allow support individuals into nursling facilities or hospitals for dying patients, and so much more.

3) Affirmative defense goes out the window with ever changing guidelines and conflicting guidelines. Agencies like the CDC and WHO have sent conflicting guidance throughout the past nine months. They have acknowledged that repeatedly. If we implement one round of guidelines, but then tomorrow have to change the rules, how can we possibly come up with an affirmative defense and meet whatever that standard is- we almost would have to date everything and employ someone to track that. As a small business owner, I am my only employee. Should I just work part time hours, keep up on guidance, rewrite policies with every change (I have had to change the sign on my door at least six times in the past six months based on guidance) and expect my financial prosperity to suffer at the request of 6 agencies that are forever changing their guidance? And, please note with each change in guidance, my ethics require me to get informed consent from patients regarding that guidance. That is a lot of unnecessary repetition with patients and interference with therapeutic process.

4) I appreciate the acknowledgment of some of my previous concerns with respect to this bill being acknowledged in this section, but I would ask, if you are willing to concede in these areas, do you not recognize our rights to be free from liability in making all other decisions regarding public health. Is it not a fundamental right for each person to determine and be trusted to take care of their own health and well being? I work with patients to empower and account for their decisions every day. I was taught that this is just and right. Where have we abandoned those principles?

We have a trust in the ethics of medical professions and all other professions to operate within the guidelines already established by their professions. This law is asking or allowing to operate outside of those in exchange for corporate driven guidance that may or may not respect those guidelines and ethics. I cannot and will not abandon my principles and ethical obligations for patient care and consent in favor of oversight from agencies that do not make decisions for the scope of knowledge and information relevant to my practice. That would erode patient trust and public obligation. From my expectations of government obligations, I would see it as your obligation to let the professionals of industry guide practice without being overshadowed by this "war" we are fighting against coronavirus that has somehow managed to wrap everyone in fear. What is the larger issue that we would even consider abandoning inalienable rights, patient-doctor relationships, ethical obligations in favor or corporate written policies outside the scope of patient rights or public rights?

Sections 9 and 10 seem to be throw ins looking for hopeful resolution of issues that may or may not have anything to do with the original intent of this proposed law.

Maybe Questions that others are asking, but have no answers yet:

How come we are bring this public health issue to the forefront, but we are not trying to legislate other health issues, colds, viruses or behaviors of businesses? People for thousands of years have carried viruses, bacteria, parasites and the like that can be transmitted. We have never before enacted or imposed liability for human interaction. How come now?

What is the push on the federal level for legislation to protect corporations form liability? I know that this legislation has been taken from the federal level to the state level because it was not able to be passed through the federal platform. How come and what is the relationship to the Heroes Act? Does anyone know that they are encouraging business owners to act outside the scope of their business, practice and knowledge, or that what they do goes against the respect for humanity and dignity of the human relationship? For example the guidance demanding temperature checks of others invokes a need for medical understanding of human temperature and indications, that people may have varied temperature readings for a variety of reasons, none of which have to do with an unisolated virus, but you are asking us to possibly deny services and invoke no liability for that decision? Another example, I have an elderly patient who has a number of breathing problems and cannot even walk without labored breathing. He has passed out four times in grocery stores because they are demanding a mask be worn and he wants to be compliant, and in wearing a mask is oversaturating his body with carbon dioxide. When or if he

dies because of the misapplied mandates, there is no liability for government or businesses with this bill.

I have more but I will reserve and put forth my thoughts in hearing tomorrow. Thank you.

Thank you Representatives for your time and attention this morning in listening to testimony regarding this bill before you addressing Liability Protections as they relate to COVID 19 response and guidance. I became aware of this bill less than three weeks ago and have discussed the measures outlined within the text with a number of people, including emails with legislators, phone calls, and discussion with those individuals lobbying in support of the bill.

When I first started discussing this bill, I was minimized with Senator Fitzpatrick indicating that the only people against this bill with "Democrats and trial lawyers" and that I simply did not understand the bill. Well I want to assure you that I am an Independent voter although with our current systems, I am often in a position to support more conservative candidates (which means I have voted Republican my entire life), that although I work with a lot of attorneys, I in no way want to be one, and finally that I am quite capable of grasping the concepts as outlined. I would encourage Mr. Fitzpatrick to not diminish the capacity of his constituents when he is trying to advocate on legislation he is invested in to the point of being dismissive.

I want to make it clear that I clearly understand the intent behind the bill as drafted. I also understand there is more her than meets the eye. And I believe that if you do a bit of homework there are several driving forces behind this bill. I will get to that mischief a bit later.

Let me assert that I clearly understand the desire that businesses have in being offered protections. I am a small business owner, owning two small businesses operating in Yellowstone, Big Horn and Rosebud Counties. But you see, I am also a small business owner who serves those disadvantaged, vulnerable and easily coerced. I am a social worker by education and justice is a very important value to me. I am bound to it naturally and ethically within my profession.

No matter how badly I may want protection from liability, I want honesty, justice the respect for humanity more. While far from perfect, I strive to bring those values to life in all of what I do. I also have high expectations that those in service to others also bring those same values and ability to place those values as a priority. As representatives in service of protection of the people of Montana, I am sure those are important values to you as well. And, even more importantly as Daniel Webster indicating in Preserving the Principles of the Constitution, the Constitution you uphold was made to guard the people against the danger of good intentions. It is the obligation from those sitting in your seats to "bind a man from mischief by the Chains of the Constitution".

As a representative who has taken the Oath of office to uphold the Constitution against all that would seek to override it, I would contend that this legislation seeks to establish oppressive regulation through codification of corporate guidance based on no real science, studies, or established facts, but an over-abundance of caution and reactionary emotions. Fear is the driving force of most of the guidance issued by the six agencies that this bill seeks to put in charge over Montana businesses. As such, it becomes another layer of corporate and government oversight and an abundance of regulations that are ever changing and conflictual at this point. (Please refer to my email). And if businesses wishes to establish compliance with the weight of the guidance, we must keep up with ever changing directives to avoid a lawsuit. For a family business, like my husband and I's, it is impossible to keep up with more than 180 directives of the CDC in a ten month time period, let alone guidance from the other agencies listed in the bill. And mind you, that guidance, becomes part of this law without due process, testimony, or hearing if this bill passes.

Furthermore this bill, dismisses corporate liability when clearly there may be some. This bill would allow physicians or other health care professionals to disregard the ethics of practice in favor of public health guidance that dismisses patient concerns and needs. For example with virtual health checks, temperature readings, social isolation and quarantining, a patient who is actively suicidal may not be seen and a therapist or psychiatrist could simply dismiss that obligation for the sake of following newly established protocols dictated by the state or public health agency in direct conflict with our professional responsibility. Believe me, as a therapist, I have seen this happen in the past six months. The nationalization of health care through public health or world health guidance is immoral, takes away the property and natural rights of citizens as well as establishes a norm of giving away personal inalienable rights for the sake of the nanny state.

When I was growing up, I was taught to be respectful of others while maintaining accountability for myself. I believe I am still quite capable of that and work to empower others for the same. Thomas Jefferson indicated the good sense of the people will always be found to be the best army. He also said that peace is best preserved by giving information to the people over energy to the government. The most legitimate engine of the government is to educate and inform the people. Public health guidance is best left to that aim rather than a weapon in the hands of business owners who are uncertain and uninformed that enforcement of guidance is violation of inherent rights. And as a business owner, I am unwilling to become the tool that the government uses to usurp the rights of others just for the promise of liability protection. I will not be used as a weapon of coercion and I will not be threatened or be afraid of a lawsuit that is highly unlikely to happen if I follow the professional guidelines within my scope of practice. I have full faith in my abilities and in the protections already afforded to me. And I certainly have faith in the ethics of my profession over corporate guidance that does not take my ethics and responsibilities into account as the first priority.

In my email which is attached here to my statement, I raised some questions for consideration. One issue that became clear to me in my research of this issue is that these liability protections were first introduced and denied on the federal level in the Heroes Act. There was not support to get the protections through at that level so they sent the states out on a mission in hopes of then bringing it back to the federal level for passage with a majority of the states already have dug the foundation. Fourteen states have already fell for this. That was widely reported and document in December 2020.

And as I was given permission to quote, "This is the whip that keeps the states in line to the Federal government. If a state became financially independent and did not want or need Federal funding, they could accomplish great things". As a Montana business owner, I am standing here and asking you to tell Federal oversight and pressure to take the next bus out of town because those games are not tolerated here. And yes Mr. Herbst that is the kind of back room deals that an honest person will not find palatable.

I would assert that as a business owner, I am unwilling to be used as a whip to my customers and patients, nor my neighbors and that here in Montana we do not exist to do the bidding of the Federal government. I wish to retain our rights here in Montana, for the people. I will not be someone else's slave to do wrong for the sake of money and selling out the rights and freedoms of my neighbors. The .8 billion dollars appropriated to the State in the most recent stimulus package if allocated according to the Heroes Act (tax foundation.org) cannot buy my neighbors freedom and property protections. We are

worth far more than that and if we all believed that we would not even find ourselves here this morning with this burdensome measure.

And lastly, please ask yourself how come corporations, particularly health corporations are seeking liability protections. Ask that question, then go read the dossier about Covid 19 against Dr. Fauci by Dr. David Martin. Years of research with this virus has created a drive for more money, testing measures, gene therapy implementation and overall greed. After you see that information which I will gladly forward to you if needed, you will have a more complete understanding of the kind of corporate greed and sell out at the cost of humanity, ours as well as the victims of this entire exercise. No conspiracy, just facts. No wonder they want protections. I say, hold everyone willing to engage in unjust actions, inhumane and unconstitutional measures accountable. Please uphold your oath to protect all of Montana people.

EXHIBIT 18
DATE 1-22-2021
SB 65

DATE: January 21, 2021

TO: House Business & Labor

FROM: Al Smith, Montana Trial Lawyers, monttla@mt.net, 406-439-3124

RE: SB 65 - OPPOSED

The member attorneys of the Montana Trial Lawyers represent individual Montanans, their families and small businesses who have been injured or harmed by the actions or omissions of others. We work to assure that all Montanans are able to exercise their constitutional right of access to the courts to seek a "speedy remedy for every injury of person, property, or character" as guaranteed by Article II, Section 16 of the Montana Constitution.

We oppose SB 65 as an unnecessary abrogation and limitation of those rights. This bill is unneccessary, there has not been an explosion of COVID litigation – I'm aware of only two cases in Montana involving malpractice, nursing homes in the Flathead and Butte. I'm not aware of any consumer or worker lawsuits at this point. My members have received requests for assistance from businesses that are angry that their business interruption insurance claims are being denied.

Our current law already provides protections for businesses and medical providers, which is why there have not been an explosion of COVID cases. Under current liability laws, businesses and medical providers are only required to do what is reasonable under the circumstances; thus, if they take reasonable steps, take responsibility, to protect workers, customers and patients, they will not face lawsuits.

SB 65 essentially says that businesses and providers do not have to act reasonably or responsibly, and they can act unreasonably or irresponsibly and still not face any lawsuit to hold them accountable for the harms they may cause. It is not responsible to give businesses immunity when they unreasonably or irresponsibly expose their workers and consumers to COVID-19. It makes no sense that the main priority is to eliminate the rights of workers, consumers and patients.

We understand that the Governor has made this immunity bill a priority step towards rescinding the mask mandate. We do not see how providing immunity improves the health of our communities and therefore allow for rescinding the mask mandate. If anything, this bill removes any confidence that it will be safe to enter businesses since they have no responsibility to follow reasonable safety precautions.

Let me go through the bill with some specific comments and concerns.

Page 3, line 17, Section 2, **Liability – this section makes it clear that persons cannot be held liable for negligent acts or omissions PERIOD**. There is no prerequisite of complying with any orders, guidelines, best practices, etc – **NO NEGLIGENCE actions at all**. Negligence is acting, or failing to act, as a reasonable person would in similar circumstances. Only acts or omissions that meet the higher standard of gross negligence, or willful and wanton misconduct, or intentional tort would be allowed.

It's important to remember that to be successful, a plaintiff in a negligence action must prove: (1) a duty owed to the plaintiff; (2) a breach of that duty; (3) an injury was caused by the breach of duty; and (4) the damages caused by the injury. **With COVID, (3) above, causation, is very difficult to prove, which is one reason so few COVID negligence suits have been filed.**

Page 3, Section 3, **Premises owner's duty of care**, - Look closely at this section, do you see any duty of care in this section? I don't. No duty, no responsibility, just immunity unless grossly negligent.

Pages 4-5, **Liability of health care providers** This would allow any provider get immunity simply by claiming lack of "staffing" and "other resources" due to COVID. This is immunity for **all** medical care, not just COVID care – page 5, line 10. Legitimate arguments can be made under current law that what was done/not done were "reasonable under the circumstances." The concern with this sub-section is that it will be used with a summary judgment motion to preclude a legitimate claim from going forward.

One suggestion: at least provide that health care providers **must demonstrate** that a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 caused the health care provider to provide care to a person which did not meet the level or manner of care that otherwise would have been required in the absence of covid-19.

Page 5, line 14 – provides immunity for "acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment." Really? A doctor who has been treating COVID patients fails to wear a mask when seeing a non-COVID patient, who then comes down with COVID – it's not reasonable to expect that a doctor would wear a mask when seeing a patient???

This section also protects the worst of the worst that we've seen nationally, private equity owners of nursing homes that refused to invest in PPE protections. These owners refused to buy PPE

even once it became available. Protecting them for the "nonuse of PPE" because they failed to act reasonably in this situation is negligent, but protected from legal accountability under this section.

Page 5 Section 5 – **the products immunity section.** This would prevent health care providers, first responders, and all other Montanans, from holding companies responsible for harms negligently caused by their faulty products. This does not just protect Montana businesses, AND they are only required to do what is reasonable under the circumstances; thus, if they take reasonable steps, take responsibility, to protect workers and customers, they will not face lawsuits. Nationally we've seen repackaging of non-medical masks as medical masks and sending them to emergency workers. I could understand if this section just applied to donated products – that is where you usually see the gross negligence, willful and wanton misconduct, or intentional tort standard – for volunteer, charitable actions, like the Good Samaritan law.

Page 6, Section 6 **Affirmative defense** – This section would provide **complete immunity** – not even actions where there is gross negligence, willful and wanton misconduct, or intentional conduct would be allowed - if a business follows any recommended guidelines or regulations! With an Affirmative Defense - the defendant introduces evidence, which, if found to be credible, it will negate ALL civil liability, even if it is proven that the defendant committed the alleged wrongful act. Nothing more would be required to obtain **complete immunity** – line 13-14.

Page 6, **Section 8. Limitation on requirements**. This section provides that common sense COVID protections cannot be considered standard, responsible care. This makes it obvious that this bill has nothing to do with improving our community health, but only protects businesses that fail to act reasonably and responsibly.

All this bill does is provide unnecessary immunity, restricting or denying the rights of injured Montanans, and it does absolutely nothing to improve the health and safety of our communities.

We keep hearing from politicians about relying on people to take responsibility during this pandemic. How is it responsible to give businesses immunity when they unrasonably or irresponsibly expose their workers and consumers to COVID-19? It makes no sense that the path to rescinding the mask mandate is to eliminate the rights of workers, consumers and patients.

COVID Cases in Montana

Civil Rights 19

Other public safety measures (including private parties trying to enforce government bans) 9
Business closure, stay-at-home order and group-gathering-ban challenges 4
Voting 4
FOIA disputes 1
Other 1

Labor & Employment 6

Unlawful termination 5
Other 1

Health/Medical 2 - <u>The only cases covered by SB 65</u>

Wrongful death 2 - **TWO CASES, Venture Capitalist Nursing Home cases**

Real property 2

Landlord/Tenent issues (eviction and failure to pay rent and failure to extend lease) 2

Consumer Cases 1

Non-education-related cancelations or postponements (e.g. prepaid air, cruise, event tickets, vacation property rental) 1

Education 1

Request for refund 1

Insurance 1

Insurer denied business interruption insurance claim.

EXHIBIT 19
DATE 1-22-2021
SB 65

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 8:59 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 08:58

Details:
Bill: SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor
Position: Informational Witness
Representing an Entity/Another Person: No
Organization: N/A
Name: steve harman
Email: steve@steveharmanlaw.com
Phone: (406) 969-4498
City, State: Billings
Written Statement: SB 65 section 6 (Affirmative defenses) effectively provides absolute immunity from suit for COVID related issues, which is in direct conflict with Section 2 which limits liability only in settings of "gross negligence, willful and wanton misconduct or intentional tort."
Files:
Testify via Zoom: Yes
Zoom Method: Computer

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Any other type of documents such as:**
  - **@ Petitions {if any} Emails, all documents given to Committee Secretary after meeting.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

HOUSE BUSINESS AND LABOR COMMITTEE

Date: Friday, January 22, 2021 **Time:** 08:30 AM
Place: Capitol **Room:** 172

BILLS and RESOLUTIONS HEARD:

HB 168 - Generally revise laws related to union fees - Rep. Bill Mercer (R)

SB 65 - Revise civil liability laws - Sen. Steve Fitzpatrick (R)

EXECUTIVE ACTION TAKEN:

HB 63 - Do Pass as Amended
HB 117 - Do Pass as Amended
HB 149 - Be Tabled

Comments:

Mark Noland

REP. Mark Noland, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL

DATE: 1-22-2021

NAME	PRESENT	ABSENT/EXCUSED
VICE CHAIR SULLIVAN	✓	
REP. CURDY	✓	
REP. OLSEN	✓	
REP. FUNK	✓	
REP. ABBOTT		✓
REP. FITZGERALD	✓	
REP. WHITEMAN PENA		✓
REP. ANDERSON	✓	
REP. GALLOWAY	✓	
REP. LOGE	✓	
REP. SEEKINS-CROWE	✓	
VICE CHAIR BUTTREY	✓	
REP. MARSHALL	✓	
REP. NOVAK	✓	
REP. GIST		✓
REP. GUNDERSON	✓	
REP. ZOLNIKOV	✓	
REP. HARVEY	✓	
REP. DURAM		✓
CHAIR NOLAND	✓	

20 MEMBERS

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 63** (first reading copy -- white) **do pass as amended.**

Signed: Mark Noland
Representative Mark Noland, Chair

And, that such amendments read:

1. Title, line 8.
Following: "33-2-407,"
Insert: "33-20-505,"

2. Page 6.
Following: line 18
Insert: "**Section 4.** Section 33-20-505, MCA, is amended to read:

"**33-20-505. Minimum nonforfeiture amounts.** (1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts, as defined in this section.

(2) (a) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation up to that time at rates of interest as indicated in subsection (3)(a) of the net considerations, as described in subsection (2)(b), paid prior to that time, decreased by the sum of:

(i) any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection (3)(a);

(ii) an annual contract charge of $50 accumulated at rates of interest as indicated in subsection (3)(a);

Committee Vote:
Yes 20, No 0
Fiscal Note Required __

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1.25.21 JR 9:14AM

(iii) any premium tax paid by the company for the contract accumulated at rates of interest as indicated in subsection (3)(a); and

(iv) the amount of any indebtedness to the company on the contract, including interest due and accrued.

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount must be an amount equal to 87.5% of the corresponding gross considerations credited to the contract during that contract year.

(3) (a) (i) The interest rate used in determining minimum nonforfeiture amounts must be an annual rate of interest determined as the lesser of 3% a year or the amount calculated under subsection (3)(a)(ii), which must be specified in the contract if the interest rate will be reset.

(ii) The interest rate may be the 5-year constant maturity treasury rate reported by the federal reserve board as of a date or an average over a period, rounded to the nearest 1/20th of 1%, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under subsection (3)(a)(iii) and reduced by 125 basis points whenever the resulting interest rate is not less than ~~1%~~ 0.15%.

(iii) The interest rate under subsection (3)(a)(ii) must apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, must be stated in the contract. The basis is the date or the average over a specified period that produces the value of the 5-year constant maturity treasury rate to be used at each redetermination date.

(b) During the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction described in subsection (3)(a)(ii) by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction if the commissioner considers the demonstration unacceptable.

(4) The commissioner may adopt rules to implement the provisions of subsection (3)(b) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the

commissioner determines that adjustments are justified.""

Renumber: subsequent sections

- END -

HOUSE STANDING COMMITTEE REPORT

January 22, 2021

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 117** (first reading copy -- white) **do pass as amended**.

Signed: Mark Noland
Representative Mark Noland, Chair

And, that such amendments read:

1. Page 2, line 20.
Following: "or"
Strike: "applicable"

2. Page 4, line 24.
Following: "and"
Strike: "applicable"

3. Page 5, line 2.
Strike: "applicable"
Insert: "an insured's"

- END -

Committee Vote:
Yes 19, No 1
Fiscal Note Required __

HB0117001SC.hlc

1.25.21
JR 9:12AM

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE BUSINESS AND LABOR COMMITTEE

The **HOUSE BUSINESS AND LABOR COMMITTEE** TABLED

HB 149 - Allow certain card transaction fees - Rep. Vince Ricci (R)

by motion, on **Friday, January 22, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Jordee Bomgardner
(For the Committee)

(For the Chief Clerk of the House)

1:39 pm / 1/22
(Time) (Date)

January 22, 2021 (1:34pm) Jordee Bomgardner, Secretary Phone: 444-1513

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB117 DATE 1-22-2021

MOTION Do Pass As Amended

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN	✓		
REP. CURDY	✓		
REP. OLSEN		✓	
REP. FUNK	✓		
REP. ABBOTT	✓		✓
REP. FITZGERALD	✓		
REP. WHITEMAN PENA	✓		✓
REP. ANDERSON	✓		
REP. GALLOWAY	✓		
REP. LOGE	✓		
REP. SEEKINS-CROWE	✓		
VICE CHAIR BUTTREY	✓		
REP. MARSHALL	✓		
REP. NOVAK	✓		
REP. GIST	✓		
REP. GUNDERSON	✓		
REP. ZOLNIKOV	✓		
REP. HARVEY	✓		
REP. DURAM	✓		✓
CHAIR NOLAND	✓		

20 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 149 DATE 1-22-2021

MOTION Do Pass as Amended

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN		✓	
REP. CURDY		✓	
REP. OLSEN		✓	
REP. FUNK		✓	
REP. ABBOTT		✓	✓
REP. FITZGERALD	✓		
REP. WHITEMAN PENA		✓	✓
REP. ANDERSON	✓		
REP. GALLOWAY		✓	
REP. LOGE	✓		
REP. SEEKINS-CROWE		✓	
VICE CHAIR BUTTREY		✓	
REP. MARSHALL	✓		
REP. NOVAK		✓	
REP. GIST	✓		
REP. GUNDERSON	✓		
REP. ZOLNIKOV		✓	
REP. HARVEY	✓		
REP. DURAM	✓		✓
CHAIR NOLAND	✓		

20 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. Mark NOLAND.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB63	be amended	✓	
HB63	DO Pass as amended	✓	
HB117	be amended	✓	
HB117	DO Pass as amended	✓	
HB 149	Be amended	✓	
HB 149	DOPass as Amended	✓	
HB 149	Be Tabled	✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Mark NOLAND for any amendments proposed on this date.

Rep. _____ Rep. Duram 1-22-2021
(Signature) (Print Name) (Meeting Date)

N. DURAM

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. SULLIVAN.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB63	DO PASS AMENDMENT 63.1.1	X	
HB63	DO PASS AS AMENDED	X	
HB117	DO PASS AMENDMENT 117.1.1	X	
HB117	DO PASS AS AMENDED	X	
HB149	DO PASS AMENDMENT 149.1.1	X	
HB149	DO PASS AMENDMENT 149.1.2	X	
HB149	DO PASS AS AMENDED		X
HB149	TABLE MOTION	X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. SULLIVAN for any amendments proposed on this date.

Rep. Rynalea Whiteman Pena (Signature)

Rep. Whiteman Pena (Print Name)

1/22/2021 (Meeting Date)

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. Sullivan.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB-63	DO PASS AMENDMENT 63.1.1	X	
HB-63	DO PASS	X	
HB-117	DO PASS AMENDMENT 117.1.1	X	
HB-117	DO PASS	X	
HB-149	AMENDMENT DO PASS 149.1.1	X	
HB-149	DO PASS AMENDMENT 149.1.2	X	
HB-149	DO PASS		X
HB-149	TABLE	X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. SULLIVAN for any amendments proposed on this date.

Rep. _____ Rep. Abbott 1/22/2021

(Signature) (Print Name) (Meeting Date)

Montana State Legislature

WITNESS STATEMENTS

The following is an assortment of documents that are

witness statements.

[A witness statement is a signed document recording the evidence of a witness.

A definition "a written statement signed by a person which contains the evidence which that person would be allowed to give orally".]

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Thursday, January 21, 2021 7:36 AM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 07:35

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Barry Bidwell
Email: barryandericabidwell@rangeweb.net
Phone: (406) 356-4377
City, State: Forsyth
Written Statement: I am a strong proponent of this bill, it will jeopardize the education system, fire departments police departments and myself. Montana has poor wages for skilled workers why would we try to take the bargaining power away from these tax payers. The benefits will also suffer from lack of ability to bargain. Let the people of Montana have a voice its worked for many many years.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 10:26 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 10:25

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Federation of Montana State Prison Employees
Name: Cathy Clark
Email: catsnewstart11@gmail.com
Phone: (406) 491-1345
City, State: Butte
Written Statement: Not Provided
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Tuesday, January 19, 2021 7:32 PM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-19-21 19:32

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Linda G Semones
Email: lindasemones@hotmail.com
Phone: (406) 599-3916
City, State: Bozeman
Written Statement: Please do not pass this egregious bill out of committee. It has so many bad provisions that it is hard to pick one to write about. However, the elimination of exclusive union representation is probably the worst provision. This alone would pit employee against employee, each person seeking personal favor with the employer to advance his or her own status. Employers could once again pay men more, give men more benefits, and provide special contractual clauses. Under union representation, men and women all benefit. Salaries are not hidden from other employees who may not receive the same favors. And, the union works in the best interest of ALL the employees, even non union employees, with pay scales that are equitable. There is complete transparency as negotiations are public. Any process that is less equitable and transparent than this is not acceptable.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Wednesday, January 20, 2021 2:14 PM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-20-21 14:14

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: James Jessop
Email: jjessop@hbrfd.com
Phone: (406) 646-9094
City, State: West Yellowstone
Written Statement: My name is James Jessop. I currently work as a firefighter who has moved up the ranks from a IAFF member to a non IAFF member. I believe that the benefits an employee gets from being in a union out way the benefits from not being in one. Employee rights are important and should be protected especially in high risk occupations. I believe enacting this bill would open up the possibility for employers to pay their hard working staff lower wages and not provide hard earned benefits these industry driven jobs deserve. I thank you for your service and your time.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Wednesday, January 20, 2021 2:48 PM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-20-21 14:48

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Michael Thurlow
Email: Thurlowmike@gmail.com
Phone: (406) 370-0384
City, State: Missoula MT
Written Statement: Hello, my name is Michael Thurlow and I live in Missoula, MT.
I would like you to please stop HB168. I am a proud Missoula Firefighter and I believe I am dedicated to my community. I strongly feel this bill is unfair for many reasons. Unions are healthy parts of our society and changing what is not broken is not right. This change will affect my family financially along with many of my coworkers and friends. One smart man told me I should "vote my wallet". This is directly related to that! Currently, if people do no wish to be part of a union they are not required to be! It is already their choice! Please leave the ones who wish to be alone. Thank you for your time abs please feel free to reach out to me
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Wednesday, January 20, 2021 7:09 PM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-20-21 19:08

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Myles Kelly
Email: myleskelly@me.com
Phone: (406) 274-6603
City, State: Missoula montana
Written Statement: Not Provided
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Wednesday, January 20, 2021 9:56 PM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-20-21 21:56

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Justin Walsh
Email: jmwalsh99@yahoo.com
Phone: (406) 360-6030
City, State: Missoula
Written Statement: Not Provided
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 7:45 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 07:45

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Federation of Montana State Prison Employees
Name: Aaron M Meaders
Email: kinggrogg@gmail.com
Phone: (406) 461-6494
City, State: Butte, Montana
Written Statement: Not Provided
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 9:24 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 09:23

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: UA Local 459 Missoula, MT
Name: Don Halverson
Email: dhalverson@uanet.org
Phone: (406) 549-3479
City, State: Clinton, MT.
Written Statement: No matter the testimony in favor of HB-168, the main purpose of this bill is to defund Unions. This and many more upcomin bills in this Legislative session are an attempt to eliminate the main defenders of workers rights, wages, and safety regulations. All three of these things are considered by many on the supporting side as an "obstacle" for businesses bottom line, and will be the next domino to fall. Don't fall for the smokescreen of this being a benefit for workers, it is in fact, a detriment to ALL workers as Union wages and worker rights create a "Raise all ships" situation among the entire workforce.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 10:01 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 10:01

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Boilermakers Local 11
Name: clint Penny
Email: cp@boilermakers11.com
Phone: (406) 461-4587
City, State: East Helena
Written Statement: Good afternoon,
My name is Clint Penny, and I am the Business Manager Secretary Treasurer for Boilermakers 11 in East Helena Mt. I currently represent approximately 200 boilermakers across the state of Montana. I am writing to express my concern about HB-168. I have been a Union Boilermaker for twenty-seven years. I was born in raised in Butte Mt. listening to the stories my grandparents talked about the hard work the working men and women and solidarity. these where choice they made then and a choice that I have made now. I chose to be a union Boilermaker because of the work culture the on-the-job safety measure the craftmanship of the trades the of course the wage and the benefits.
I have always had the choice to work nonunion. I have always had the choice to be part of the union.
However, in representing the union it is my opinion that you are taking away the choice for the unions. You are intruding on a person choice too have a relationship between unions and their members. Telling people what they should or should do with their own money. Not to mention the turmoil it causes in the union itself. Unions that serve our very community such as nurses, law enforcement, firefighters, teachers and many more.
Hb-168- is a harmful and unnecessary overreach .
I thank you for your time.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 10:04 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 10:04

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Isabel shaida
Email: isa.shaida@gmail.com
Phone: (914) 441-6110
City, State: BOZEMAN
Written Statement: Members of the Committee,

I strongly appose HB 168. It gets in the way of the VOLUNTARY relationship between union and its members. No one is forced to join a union or pay their dues. It is an overreach of government to pass legislation that dictates what a worker can and cannot do with their own money. During the Covid Crisis our Montana nurses, law enforcement, firefighters, and teachers have delivered essential services to every community. They deserve support, they deserve respect. We must not interfere with their relationship with their own unions. Instead, we must support them which includes allowing for Union's! Thank you
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 10:25 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 10:24

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Craig Davis
Email: 1962cdav@gmail.com
Phone: (406) 949-7552
City, State: Kalispell, Montana
Written Statement: Thank you for hearing me today. I have been a Union member for many years. I pay Union dues and belong to a Union by my own choosing. I am not forced to be a Union member. My Union dues are deducted from my paychecks, this is an agreement voluntarily entered into by me, my employer and my Union. I resent the idea that this bill would tell me that I cannot have dues deducted from the paycheck that I earn. After all, it is my money and not yours. In my opinion this is simply government overreach.
Files:
Testify via Zoom: Yes
Zoom Method: Phone

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 10:48 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 10:48

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Mick Mulholland
Email: mickey@montanalaborers.com
Phone: (406) 396-4435
City, State: MISSOULA
Written Statement: Hello Committee of Business and Labor, HB 168 is an affront to nurses, teachers, firefighters, law enforcement etc., who deliver essential services to all Montana communities day in and day out. HB 168 is plain and simply a government overreach and an assault on the freedom of speech and association, to the above described frontline workers. None of these workers are ever forced to join a Union and Union members voluntarily agree to pay their dues. HB 168 is unconstitutional and unnecessary.
Thank you for your time and attention!
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 10:50 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 10:49

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Georgene Crow
Email: yellowmulecrow32@gmail.com
Phone: (406) 876-5204
City, State: Wyola, Montana
Written Statement: I am against this bill. I am a union member and with my union to the fullest. So we are AGAINST THIS ACT.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Thursday, January 21, 2021 11:04 AM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:04

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: REBECCA M RIEDL
Email: rebeccariedl@hotmail.com
Phone: (406) 652-8515
City, State: Billings
Written Statement: The Janus decision already addresses the issue of compulsory membership into unions.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 11:05 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:05

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: Pacific Northwest Regional Council of Carpenters
Name: Riley McCauley
Email: Rmccauley@nwcarpenters.org
Phone: (406) 200-4940
City, State: Billings
Written Statement: I am opposing HB 168 on behalf of the Montana carpenters representing our 550 members throughout the state. I am a opposing this bill because it creates chaos in school districts, local governments, and state governments by allowing any number of parties to negotiate with public employers.
In every unionized public sector worksite in Montana - school districts, universities, cities, counties, state, and more - management and workers have VOLUNTARILY negotiated that the employer will deduct dues for members from their paychecks. No one forced this to occur; both workers and employers have agreed over and over again that this is an efficient and practical option. This is also a government overreach and an assault on the freedom of speech and association of frontline workers like nurses, educators, police, and state troopers who protect, serve, educate, and care for Montana citizens. I am a Conservative myself and feel this is not in the best interest of our parties use of time.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Thursday, January 21, 2021 11:10 AM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:10

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Tavis Campbell
Email: campbelltavis@gmail.com
Phone: (406) 546-2956
City, State: Missoula
Written Statement: I am OPPOSED to this bill.

I have been a union member of IAFF Local 271 Missoula Firefighters for 16 years. And I can tell you that being a union member is something I take great pride in and and it's important to my livelihood.

Montana has a strong tradition of enjoying the freedom to join together in a union, to work for improved working conditions. HB168 is an attack on public service workers' freedom to negotiate.

It targets frontline workers—the nurses, teachers, firefighters, law enforcement, sanitation and food service workers. The same people who kept us safe and our communities functioning during the COVID outbreak.

It is also an illegal intrusion on workers rights and freedoms. All the while creating a bureaucratic nightmare.

Every single state and federal court to consider the issues presented in HB 168, including a state court in Montana, has ruled that the Janus decision does not apply to the voluntary relationship between unions and their members.

HB 168 is government overreach and an assault on the freedom of speech and association.

No one is ever forced to join a union and union members voluntarily agree to pay dues. Dont' mess with something that is working well.

Thank you for consideration.

Tavis Campbell
Missoula Fire Dept. firefighter
Files:
Testify via Zoom: Yes
Zoom Method: Phone

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 11:11 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:11

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Deborah Senn
Email: dksenn@yahoo.com
Phone: (406) 855-8366
City, State: Billings Mt 59102
Written Statement: I am opposing HB 168 on behalf of the Eastern Montana Postal Workers representing our 150 members throughout the state. I am a opposing this bill because it creates chaos in school districts, local governments, and state governments by allowing any number of parties to negotiate with public employers.
In every unionized public sector worksite in Montana - school districts, universities, cities, counties, state, and more - management and workers have VOLUNTARILY negotiated that the employer will deduct dues for members from their paychecks. No one forced this to occur; both workers and employers have agreed over and over again that this is an efficient and practical option. This is also a government overreach and an assault on the freedom of speech and association of frontline workers like nurses, educators, police, and state troopers who protect, serve, educate, and care for Montana citizens. I am a Conservative myself and feel this is not in the best interest of our parties use of time.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 11:12 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:12

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: Yes
Organization: IBEW 44
Name: Dwight Rose
Email: dwight@ibew44.org
Phone: (406) 459-3548
City, State: Butte
Written Statement: IBEW 44 Stands in opposition to HB 168. We urge a do not pass on this bill. As a 25 year union member, 3rd generation of belonging to a union. This has been my choice as well as many others to be union, most Montanans agree we should have the choice to join a union, we do freely! In my case I saw what the union provided for my parents. I choose to have the same things.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 11:28 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:28

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Brian Boland
Email: brian@montanalaborers.com
Phone: (406) 788-1107
City, State: Great Falls, Montana
Written Statement: HB 168 is quite simply an attack to destroy unions and the representation they provide to the members who join together to negotiate for wages, working conditions, safety and benefits. Union members also agree to pay dues or fees for the representation they receive and they do this voluntarily. Please vote no on HB 168. Thank you for your time and consideration in this matter.
Respectfully submitted,
Brian Boland
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Thursday, January 21, 2021 11:36 AM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:35

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Robert J Shelton
Email: aliffbiz3@gmail.com
Phone: (406) 853-0747
City, State: Butte
Written Statement: My comments will be in support of unions and my experience briefly shared.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 11:45 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:44

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Delayne Stahl
Email: delaynegall@hotmail.com
Phone: (406) 595-8789
City, State: Billings, MT
Written Statement: I strongly oppose house bill 168. This very bill takes away rights and protections of the same people that have protected our communities during this pandemic. You take away rights and protections of the nurses, who have protected the sick; the teachers, who care for and educate our next generation; the public service workers, who keep us safe, protected, and serve our communities, the firefighters, the policeman, the city workers, etc. This class of working Americans, have not only protected our citizens, but now we call upon you, our elected officials, to protect us. I not only encourage, but implore, you PLEASE VOTE E NO on House Bill 168
Files:
Testify via Zoom: Yes
Zoom Method: Phone

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 11:52 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:52

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Kamlin EF Cox
Email: kamlincox@gmail.com
Phone: (406) 579-5239
City, State: Bozeman
Written Statement: HB 168 is just another example of a fundamental misunderstanding of established labor law. No one is ever forced to join a union and union members voluntarily agree to pay dues. We shouldn't be passing legislation that allows the government to tell workers what they can and can't do with their own paycheck.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 11:53 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 11:52

Details:
Bill: HB-168: Generally revise laws related to union fees 2021-01-22 08:30 AM - (H) Business and Labor
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Kamlin EF Cox
Email: kamlincox@gmail.com
Phone: (406) 579-5239
City, State: Bozeman
Written Statement: HB 168 is just another example of a fundamental misunderstanding of established labor law. No one is ever forced to join a union and union members voluntarily agree to pay dues. We shouldn't be passing legislation that allows the government to tell workers what they can and can't do with their own paycheck.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Thursday, January 21, 2021 9:36 AM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 09:36

Details:
Bill: SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Bozeman Area Chamber of Commerce
Name: Ed Bartlett
Email: efbartlett@charter.net
Phone: (406) 431-6014
City, State: Missoula
Written Statement: Mr. Chair and Committee, I am the lobbyist for Bozeman Area Chamber of Commerce. We support SB 65. It is a very good bill, providing much needed relief and protection for businesses, non-profits and other entities. We urge your support of SB 65. Thank You, Ed Bartlett
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From: leg-noreply@mt.gov
Sent: Thursday, January 21, 2021 10:08 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 10:07

Details:
Bill: SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Big Sky Economic Development
Name: Steve Arveschoug
Email: stevea@bigskyeda.org
Phone: (406) 869-8401
City, State: Billings
Written Statement: From an economic recovery and pro-business perspective, Big Sky Economic Development would like to voice our support for Senate Bill 65. The measures of protection included in this bill offer our State's small business owners peace of mind as they strive to keep their doors open and sustain their workforce during the pandemic. The collective success of Montana's small business community is as important as it has ever been and we see SB 65 as an effort to support and encourage their commitment to our economic growth.
We are also compelled to support this legislation as it offers protections for our State's critically important healthcare workers. The protections outlined in this bill will allow our healthcare workers to continue delivering world-class care to our neighbors afflicted with the novel coronavirus with reasonable protections from potential litigation.
The work we have undertaken over the past ten months with our Yellowstone County Economic Response and Recovery Team has been about creating a balance of protecting our community's public health while still encouraging economic recovery and business growth. Addressing the liabilities around COVID-19 will be critical to this balanced approach to public health and economic recovery.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Thursday, January 21, 2021 9:11 AM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 09:11

Details:
Bill: SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Defense Trial Lawyers
Name: Greg Dorrington
Email: gdorrington@crowleyfleck.com
Phone: (406) 457-2049
City, State: Helena, MT
Written Statement: Montana Defense Trial Lawyers stand in support of SB 65.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Thursday, January 21, 2021 10:39 AM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-21-21 10:38
Attachments:	SB 65 Governor Gianforte Support Ltr HBL 1-21-21.pdf

Details:
Bill: SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Governor Greg Gianforte
Name: Glenn Oppel
Email: glenn.oppel@mt.gov
Phone: (406) 431-3685
City, State: Helena, MT
Written Statement: Not Provided
Files: SB 65 Governor Gianforte Support Ltr HBL 1-21-21.pdf Testify via Zoom: No Zoom Method: N/A

WITNESS STATEMENT

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR

KRISTEN JURAS
LT. GOVERNOR

January 21, 2021

Mr. Chair and Members of the House Business and Labor Committee:

Thank you for the opportunity to register my strong support for SB 65.

The COVID-19 pandemic continues to stretch health care providers, cripple businesses, and strain our state's economy. Despite uncertainty, dedicated health care providers have helped respond to the pandemic by working long and exhausting hours, manufacturers have ramped up production of critical medical supplies and personal protective equipment, and many retail businesses have adapted quickly to ensure Montanans can access needed goods and services.

While these acts undoubtedly demonstrate the resiliency of Montanans, many of our frontline essential workers and businesses still require support. I appreciate that SB 65 begins by offering protections to those who care for our residents during the pandemic, including by limiting the civil liability of health care providers and manufacturers of COVID-19-related products under certain circumstances. Such health care providers and manufacturers remain especially vital to the state's ongoing pandemic response and current initiatives to protect the most vulnerable Montanans.

Furthermore, as we work together to reopen businesses and ensure their ability to operate at full capacity, SB 65 will encourage business owners to follow our lead by mitigating the threat of unwarranted lawsuits and excessive liability during these fragile economic times.

Montana's economic comeback is largely dependent on the ability of all business sectors to operate without fear of being sued when taking reasonable measures consistent with public health guidance. By offering protection from civil liability, SB 65 ultimately incentivizes our business owners to take personal responsibility and promote actions that advance public health. In line with rewarding personal responsibility, I am committed to rescinding the existing statewide mask mandate once our most vulnerable residents are vaccinated against COVID-19 and the Legislature establishes civil liability protections. The successful passage of SB 65 is critical to meeting this commitment.

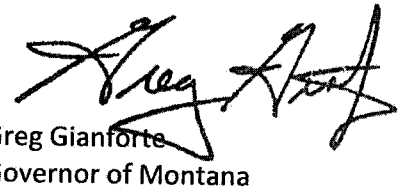
Despite potential exposure to civil lawsuits that could restrict their means of helping our communities, many manufacturers have remained steadfast in their commitment to quickly make products necessary for a successful pandemic response. Specifically, I am grateful that SB 65 will limit the liability of businesses that design, manufacture, label, sell, distribute, or donate personal protective equipment and other qualified products associated with the COVID-19 response.

STATE CAPITOL • P.O. BOX 200801 • HELENA, MONTANA 59620-0801
TELEPHONE: 406-444-3111 • FAX: 406-444-5529 • WEBSITE: WWW.MT.GOV

I am also pleased to know that SB 65 will offer health care providers greater discretion to make appropriate medical decisions related to COVID-19 without exposure to liability. Health care decisions made by medical professionals should be based on patient and public health – not on the fear of civil lawsuits.

I applaud the work of Sen. Fitzpatrick and I appreciate the amendments that were added by the Senate Business, Labor, and Economics Committee. I strongly urge your support for SB 65 as amended and I urge you to get it to my desk as soon as possible.

Sincerely,



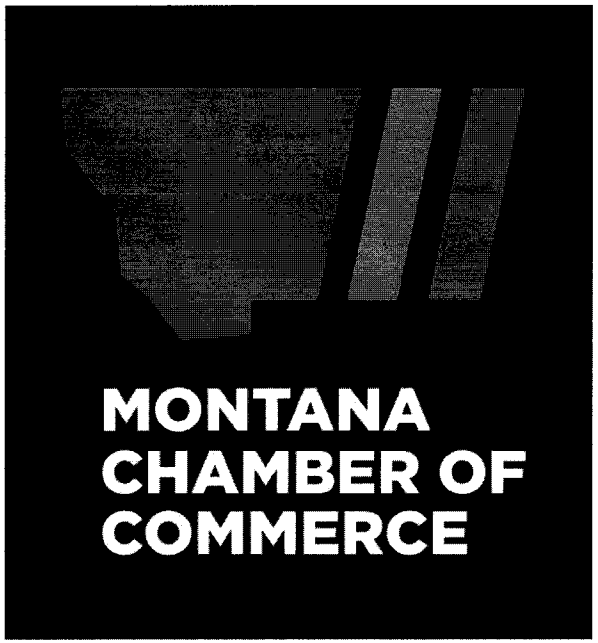
Greg Gianforte
Governor of Montana

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Wednesday, January 20, 2021 6:34 PM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-20-21 18:33
Attachments:	Coronavirus and Business Liability Survey Results - MT Chamber.pdf; LTR-COVID-Liability-Concerns.pdf

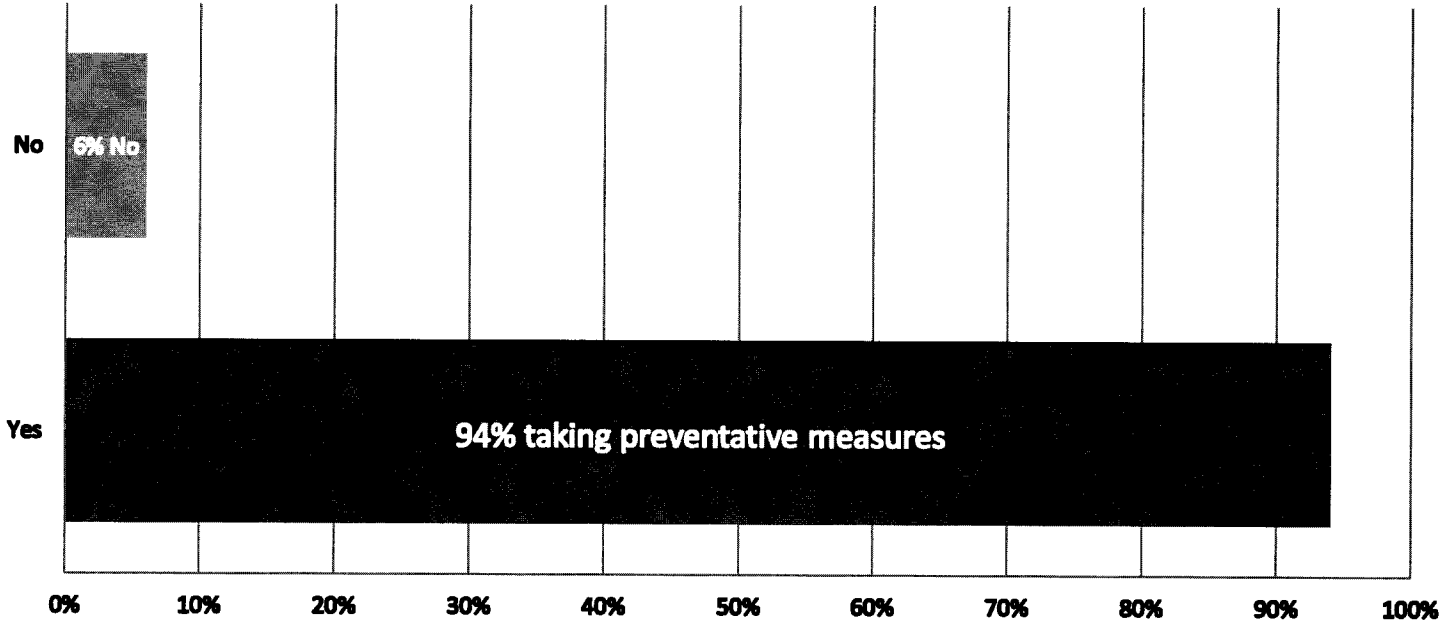
Details:
Bill: SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Chamber of Commerce
Name: Bridger Mahlum
Email: bridger@montanachamber.com
Phone: (406) 270-2652
City, State: Helena, MT
Written Statement: Two exhibits attached to supplement in-person testimony.
Files: Coronavirus and Business Liability Survey Results - MT Chamber.pdf LTR-COVID-Liability-Concerns.pdf Testify via Zoom: No Zoom Method: N/A



Coronavirus and Business Liability Survey Results
June 30, 2020

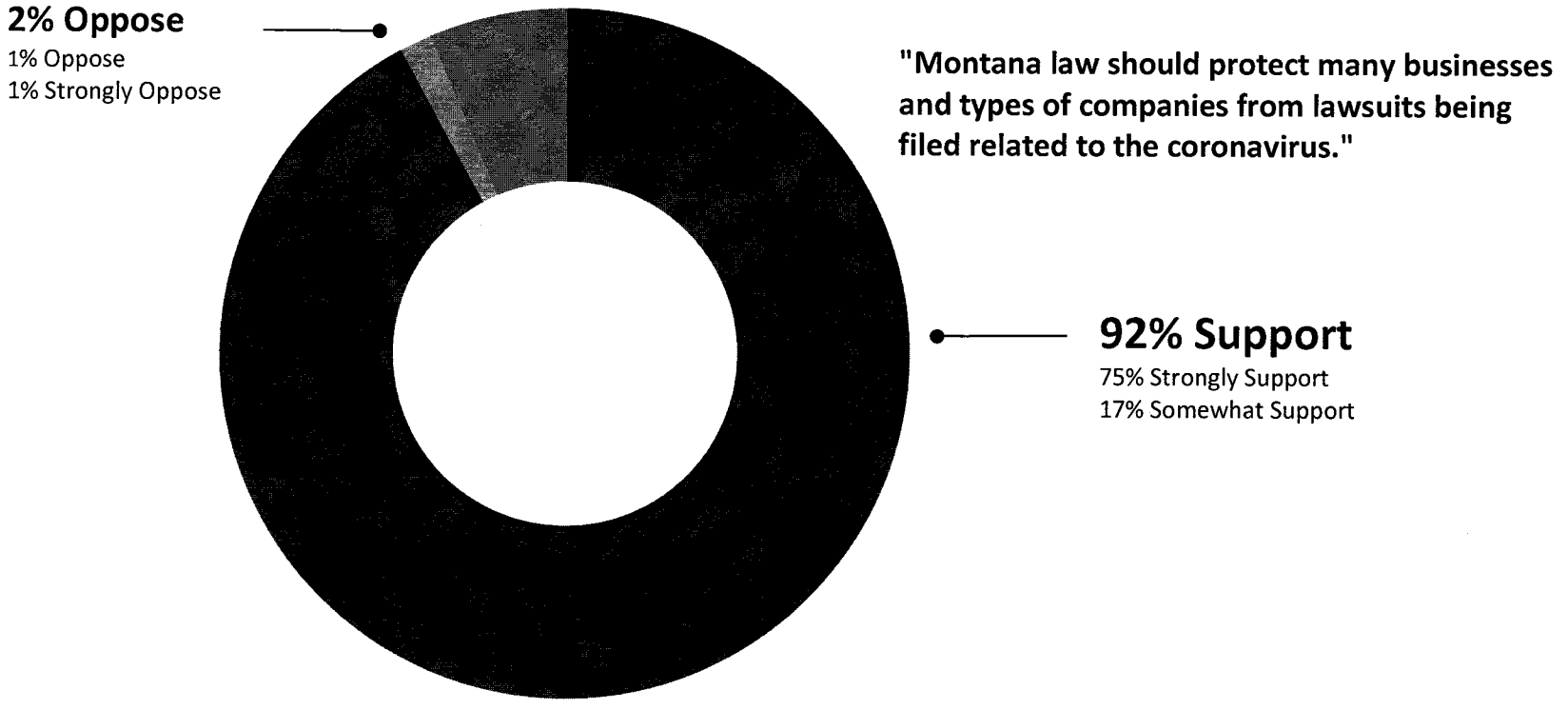
1. Do you plan to take, or are you already taking, preventive measures to help protect your employees and customers from the coronavirus they while at your business?

Answer Choices	Responses	
Yes	94%	189
No	6%	12
Answered		**201**



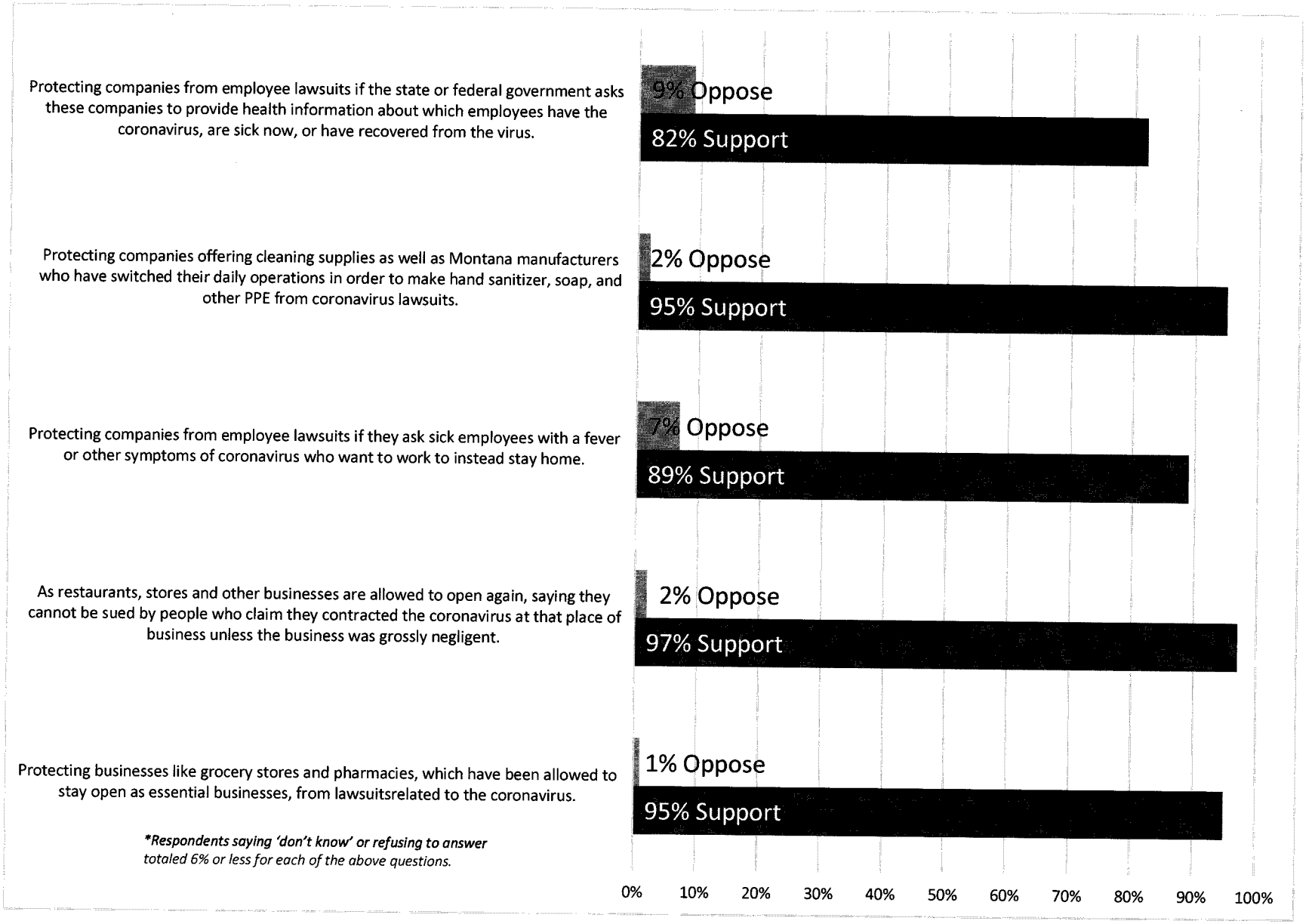
2. Do you support or oppose the following statement: "Montana law should protect many businesses and types of companies from lawsuits being filed related to the coronavirus."

Answer Choices	Responses	
Strongly support	75%	151
Support	17%	34
Oppose	1%	1
Strongly oppose	1%	2
I don't know	5%	9
I do not want to answer this question	2%	4
Answered		**201**


2% Oppose
1% Oppose
1% Strongly Oppose
"Montana law should protect many businesses and types of companies from lawsuits being filed related to the coronavirus."
92% Support
75% Strongly Support
17% Somewhat Support

3. Consider the following 5 proposals. One requirement in common would be each business would have to be following the latest health guidelines issued by government officials. Now, please tell me if you would support or oppose each proposal.

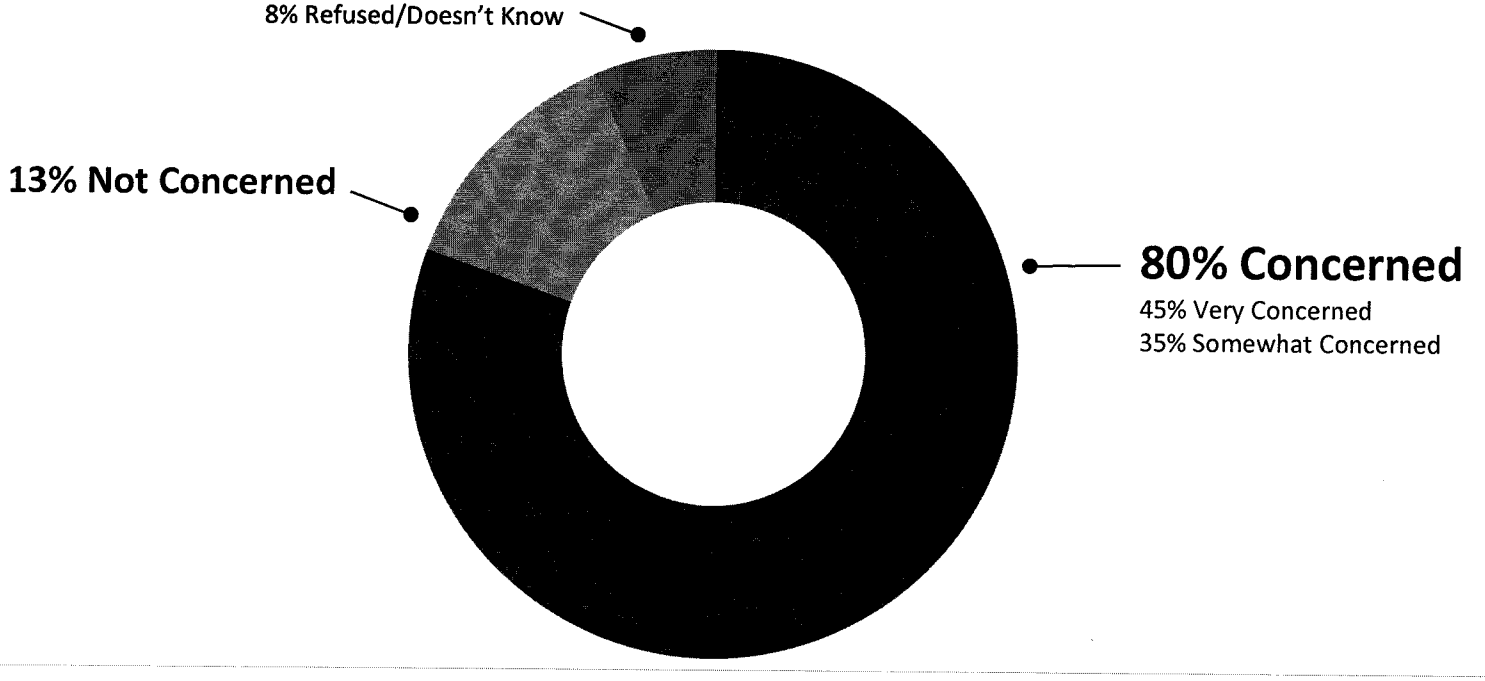
	Strongly support	Support	Oppose	Strongly oppose	I do not know	I do not want to answer this question
Protecting businesses like grocery stores and pharmacies, which have been allowed to stay open as essential businesses, from lawsuits related to the coronavirus.	75%	21%	0%	1%	3%	1%
As restaurants, stores and other businesses are allowed to open again, saying they cannot be sued by people who claim they contracted the coronavirus at that place of business unless the business was grossly negligent.	77%	20%	1%	1%	2%	0%
Protecting companies from employee lawsuits if they ask sick employees with a fever or other symptoms of coronavirus who want to work to instead stay home.	75%	14%	4%	3%	4%	1%
Protecting companies offering cleaning supplies as well as Montana manufacturers who have switched their daily operations in order to make hand sanitizer, soap, and other PPE from coronavirus lawsuits.	74%	21%	1%	1%	2%	2%
Protecting companies from employee lawsuits if the state or federal government asks these companies to provide health information about which employees have the coronavirus, are sick now, or have recovered from the virus.	65%	17%	6%	3%	6%	4%
					Answered	**199**
					Skipped	**2**


Protecting companies from employee lawsuits if the state or federal government asks these companies to provide health information about which employees have the coronavirus, are sick now, or have recovered from the virus.
9% Oppose
82% Support
Protecting companies offering cleaning supplies as well as Montana manufacturers who have switched their daily operations in order to make hand sanitizer, soap, and other PPE from coronavirus lawsuits.
2% Oppose
95% Support
Protecting companies from employee lawsuits if they ask sick employees with a fever or other symptoms of coronavirus who want to work to instead stay home.
7% Oppose
89% Support
As restaurants, stores and other businesses are allowed to open again, saying they cannot be sued by people who claim they contracted the coronavirus at that place of business unless the business was grossly negligent.
2% Oppose
97% Support
Protecting businesses like grocery stores and pharmacies, which have been allowed to stay open as essential businesses, from lawsuitsrelated to the coronavirus.
1% Oppose
95% Support
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%

Respondents saying 'don't know' or refusing to answer
totaled 6% or less for each of the above questions.

4. Considering the proposals you just read, are you concerned that unlike several other states, Montana has not done anything to address liability for employers even though Montana is opening earlier and faster than many other states?

Answer Choices	Responses	
Very concerned	45%	90
Somewhat concerned	35%	71
Not concerned	13%	26
I don't know	7%	13
I do not want to answer this question	1%	1
Other (please specify)		1
Answered		**201**



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Economic Affairs Interim Committee

66th Montana Legislature

SENATE MEMBERS
JASON ELLSWORTH
NATE MCCONNELL
FRANK SMITH
GORDON VANCE

HOUSE MEMBERS
DEREK HARVEY
JOSH KASSMIER
MARK NOLAND
VINCE RICCI, Vice Chair
SHARON STEWART PEREGOY, Chair
KATIE SULLIVAN

COMMITTEE STAFF
PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
FONG HOM, Secretary

July 22, 2020

Via Email

Dear Governor Bullock:

At its June 30-July 1 meeting the Economic Affairs Interim Committee (EAIC) discussed concerns about business liability if customers or employees become infected with COVID-19 and blame the business for contributing to that infection. Committee member Rep. Mark Noland asked the EAIC to follow up on a letter that he and Sen. Steve Fitzpatrick had sent to you in June, citing their concerns that businesses need assurance that neither customers nor employees would improperly place blame in the current pandemic. A June 10 *Flathead Beacon* article highlighted their concerns. See https://flatheadbeacon.com/2020/06/10/republican-lawmakers-request-liability-protections-businesses/.

The EAIC staff attorney reviewed actions taken by about a dozen states, many in the past 6 months, to provide immunity from damages to medical facilities or other businesses for COVID-19 services that were not grossly negligent. See https://leg.mt.gov/content/Committees/Interim/2019-2020/Economic-Affairs/Meetings/June-July2020/covid-business-liability-memo.pdf. The attorney also pointed out that 28-2-702, MCA, emphasizes that Montana's public policy is not to exempt "directly or indirectly ... anyone from responsibility for the person's own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent".

Recognizing these constraints, the Economic Affairs Interim Committee is requesting you, Governor Bullock, to determine what type of reassurance to businesses would best encourage resumption of operations without fear of facing lawsuits. Recognizing that the Governor has emergency powers to protect the public health as well as property, the members of the Committee urge consideration of waivers from liability, outright immunity, or a moratorium on COVID-19 lawsuits in situations under which a business is not grossly negligent, much as the Governor requested a stay on evictions during this unprecedented time.

As indicated by a Montana Chamber of Commerce survey taken in June 2020, 90% of the more than 200 businesses surveyed were in support of a Montana law that would protect many businesses from lawsuits filed in relation to the coronavirus. See https://leg.mt.gov/content/Committees/Interim/2019-2020/Economic-Affairs/Meetings/June-July2020/Chamber-CoronavirusBusiness-Liability-Survey.pdf.

Getting Montana businesses back in service, with appropriate precautions for workers and customers, is good for Montana. The EAIC urges the Governor to take actions that would reassure businesses of support that minimizes lawsuits and maximizes health, safety, and economic well-being for people and businesses in Montana.

Sincerely,

Rep. Sharon Stewart Peregoy, presiding officer
cc: Montana Chamber of Commerce

CI0425 0204fhxa.pdf

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Wednesday, January 20, 2021 7:31 AM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-20-21 07:31
Attachments:	SB 65 House Committee Testimony.pdf
Follow Up Flag:	Follow up
Flag Status:	Flagged

Details:
Bill: SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: National Association of Mutual Insurance Companies
Name: Mark Johnston
Email: mjohnston@namic.org
Phone: (317) 650-5968
City, State: St. Louis, Missouri
Written Statement: See attached letter
Files: SB 65 House Committee Testimony.pdf Testify via Zoom: No Zoom Method: N/A

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20 F Street N.W., Suite 510 | Washington, D.C. 20001

January 22, 2021

The Honorable Mark Noland
Chair, House Business and Labor Committee
State Capitol
Helena, Montana 59620

Re: Letter in Support of SB 65 – January 22, 2021 Hearing

Dear Chairman Noland and Committee Members:

The National Association of Mutual Insurance Companies (NAMIC)[1] writes to urge the House Business and Labor Committee favorably report SB 65, which will provide critically needed protection from unwarranted lawsuits to health care providers, medical suppliers, small businesses and others who continue to ably serve the public during the COVID-19 pandemic.

As we have learned, the strategies used to treat patients, serve the critical needs of our communities while keeping Montanans employed have been continually modified as the nation came to understand more about the virus. Strategies that made sense at one time have been adapted or replaced by new protocols learned after experience. Montana lawmakers know the tremendous stress that has been put upon the backs of society; SB 65 is a well-balanced, thoughtful approach to reducing that stress.

NAMIC appreciates your attention to this issue. If you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely

Regional Vice President – Midwest and Rocky Mountains

[1] The National Association of Mutual Insurance Companies is the largest property/casualty insurance trade group with a diverse membership of more than 1,400 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. In Montana, we have 179 member companies, including eight domiciled companies, which underwrite 49% of the state's insurance coverage.

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Wednesday, January 20, 2021 4:14 PM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor Successfully Submitted on 01-20-21 16:13

Details:
Bill: SB-65: Revise civil liability laws 2021-01-22 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Montana Self Insurers' Association
Name: Peter Strauss
Email: PStrauss@MTSelfInsurers.org
Phone: (406) 431-7220
City, State: Helena, MT
Written Statement: Montana Self Insurers Association represents employers throughout the state employing over 100,000 workers. We support SB 65 as a reasonable approach towards providing protections to customers and clients while offering business the opportunity to remain open and active in our communities. The COVID virus knows no bounds but we have to keep going as a community. Reasonable health precautions are just that - reasonable. The alternative is a draconian approach which ultimately will not serve our communities well. At the same time, businesses need to know that if they follow the rules, they will not be penalized. Thank you. Peter Strauss, Executive Director Montana Self Insurers' Association.
Files:
Testify via Zoom: No
Zoom Method: N/A

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Friday, January 22, 2021
HB 168 - Generally revise laws related to union fees
Sponsor: **Rep. Bill Mercer (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Eric Anderson	Teamsters 190, MNA		X	
Adam Haight	MT AFL-CIO		X	
John Forman	MT Building Trades		X	
John Johnson	IUOE 400		X	
Kim Rickard-Smeltzer	Laborers' #1686		X	
Hayden Lahr	IUOE Local 400		X	
Robert Shelton	Carpenters Union 82		X	
Aaron Meader	Federation of State Employees		X	
Cathy Clark	Federation of State Emp		X	
Henry Kriegel	Americans for Prosperity	X		
Joel Worth	Carpenters LU 82		X	
Luke Hoffer	IBEW 233		X	
Amanda Curtis	MFPE		X	
Richard A Matiska	IBEW 233		X	
Daniel B. Kenner	BLET		X	
Brian Lee	MEA-MFT		X	
Greg Frazer Rep HD78	House dist 78		+	
Matthew English	IBEW local 233		X	
Jack McBroom	IBEW Local 233		X	
David Passieri	My Self & 1,000,000 Citizens	X	X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Friday, January 22, 2021
SB 65 - Revise civil liability laws
Sponsor: **Sen. Steve Fitzpatrick (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Jay Bodner	MT Stockgrowers/MT Cattlewomen	+		
Holly Russell			X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Friday, January 22, 2021
SB 65 - Revise civil liability laws
Sponsor: **Sen. Steve Fitzpatrick (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Ronda Wiggers	NFIB / MCOMOA / Chamber	X		
Jesse Luther	EHIFPA, Talen, MHA, RMP	X		
Abigail St. Lawrence	MT Bldg Industry / MT Optometric Assn	X		
HENRY KIRKBRIDE	AMERICANS For Prosperity	X		
DAVID PASSIER	MYSELF & 1,000,000+ MT Citizens		X	
CONRAD EVARTS	BIZ OWNER		X	
Alan Olson	MT Petroleum Assoc	X		
Cindi Hamilton			X	
Carolyn Truscott			X	
Raye Newmeyer	self		X	
DarinGaub	self		X	
TODD O'HAIR	MT CHAMBER COMMERCE	X		
Brooke Carlson	self		X	
Jennifer Martin	self		X	
Fred Havens	self		X	
Brandie Mercer	self		X	
Marie Wyrock	self		X	
[illegible] Almstead	Self Business		X	
Charlotte Sanborn	self		X	
Holly Russel	self		X	
Chelsea Culpan	self		X	
Stuart Doggett	MCHA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

House Business and Labor Committee Zoom Testimony Requests Meeting: 01/22/2020 8:30 AM

Bill	Name	Position	Location	Email	Affiliation
HB-168	Vicky Byrd	Opponent	East Helena	vicky@mtnurses.org	Montana Nurses Association
	Mario Martinez	Opponent	Great Falls	Mmartinez@nwcarpenters.org	N/A
	Brett Gregr	Opponent	Bigfork	bgregr@vfis.com	N/A
	Alanna Wulf	Opponent	Billings	awulf@bigsky55.org	Big Sky 55+
	Loni Conley	Opponent	Missoula	loni.conley2020@gmail.com	Montana Nurses Association
	Craig Davis	Opponent	Kalispell	1962cdav@gmail.com	N/A
	Timm Twardoski	Opponent	Helena	afscme@montana.com	N/A
	Amy Hauschild	Opponent	Billings	hauschild08@gmail.com	N/A
	Tavis Campbell	Opponent	Missoula	campbelltavis@gmail.com	N/A
	Amanda Curtis	Opponent	Helena	acurtis@mfpe.org	MFPE
	James Patrick Stone	Opponent	Great Falls	jimsnagem@yahoo.com	N/A
	Delayne Stahl	Opponent	Billings	delaynegall@hotmail.com	N/A
	Mick Wonnacott	Opponent	Butte	mwonnacott@liunanroc.org	N/A
SB-65	Aimee Grmolejz	Proponent	Helena	agrmoljez@crowleyfleck.com	MT Bankers Association, MDUR
	Gary Wiens	Proponent	Great Falls	gary@mtco-ops.com	MT Electric Cooperative's Association
	Daniel Brooks	Proponent	Billings	daniel@billingschamber.com	Billings Chamber of Commerce
	Tammy Johnson	Proponent	Whitehall	tjohnson@montanamining.org	MT Mining Association
	Justine Cowdrey Palmer	Proponent	Bozeman	Justine@phbozeman.com	N/A
	Rachel Cone	Proponent	Bozeman	rachelc@mfbf.org	MT Farm Bureau Federation
	Colleen Wulf	Opponent	Billings	wulfies@aol.com	N/A
	Jack Wilgus	Opponent	Billings	jackwilgus5@gmail.com	N/A
	Al Smith	Opponent	Helena	monttla@mt.net	MT Trial Lawyers Association
	Amanda Cahill	Opponent	Not given	amanda.cahill@heart.org	American Heart Association
	Michelle Zizian	Opponent	Gardiner	zeechelle@gmail.com	N/A
	Steve Harman	Informational Witness	Billings	steve@steveharmanlaw.com	N/A

ADDITIONAL DOCUMENTS

The Washington Companies
Service in Motion®

101 International Drive
Post Office Box 16630
Missoula, Montana USA 59808
www.washingtoncompanies.com

January 25, 2021

Larry Simkins
The Washington Companies
101 International Dr.
Missoula, MT 59808

To the members of the 67th Montana Legislature:

If there is one thing we value most and take pride in at The Washington Companies, it is safety. The safety of our employees, our customers, and the public is paramount. We instill this value in every employee and ensure it is at the forefront of our decision-making.

In the face of a global pandemic, The Washington Companies has adjusted just like every other business, large and small, to protect the health and safety of its employees. We have consulted health and workplace safety experts to implement necessary COVID-19 measures in order to comply with local and state pandemic guidelines.

We support SB 65 because it incentivizes businesses to comply with the COVID-19 guidelines issued by local health authorities and the Governor's office. If the guidelines are followed, liability protection is granted. However, even those who adopt best practices and follow all of the rules know that following the appropriate guidelines does not insulate a business from a frivolous lawsuit stemming from COVID-19 exposure. Senate Bill 65 (Fitzpatrick – Great Falls) contains common sense protections for Montana businesses trying to do the right thing.

We know that SB 65 is a key element of Governor Gianforte's Come Back plan and, because of the balance it strikes between protecting our businesses from lawsuits and protecting our employees from exposure to COVID-19 by following local and state guidelines, we encourage members of the legislature to vote for SB 65.

Thank you for your service to our state,

Larry Simkins
CEO, The Washington Companies

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Mark Noland, on January 26, 2021 at 08:30 AM, in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Mark Noland, Chair (R)
Rep. Edward Buttrey, Vice Chair (R)
Rep. Fred Anderson (R)
Rep. Willis Curdy (D)
Rep. Neil Duram (R)
Rep. Ross H. Fitzgerald (R)
Rep. Moffie Funk (D)
Rep. Steven Galloway (R)
Rep. Steve Gist (R)
Rep. Steve Gunderson (R)
Rep. Derek J. Harvey (D)
Rep. Denley M. Loge (R)
Rep. Ron Marshall (R)
Rep. Sara Novak (D)
Rep. Andrea Olsen (D)
Rep. Kerri Seekins-Crowe (R)
Rep. Rynalea Whiteman Pena (D)
Rep. Katie Zolnikov (R)

Members Excused:

Rep. Katie Sullivan, Vice Chair (D)
Rep. Kim Abbott (D)

Members Absent: None

Staff Present:

Jordee Bomgardner, Committee Secretary
Jameson Walker, Legislative Branch
Cara Grewell, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 180, 1/21/2021; HB 193, 1/21/2021; HB 195, 1/21/2021; HB 210, 1/21/2021
Executive Action:	HB 151, SB 65

08:34:26 Vice Chair Buttrey

HEARING ON HB 193

Opening Statement by Sponsor:
08:35:45 Rep. Jimmy Patelis (R), HD 52, opened the hearing on HB 193, Allow unlimited winnings for sports boards.

Proponents' Testimony:
08:40:09 Neil Peterson, Gaming Industry Association (GIA)
08:41:37 John Iverson, Montana Tavern Association (MTA)
08:42:51 Rhonda Wiggers, Montana Coin Machine Operators Association (MCMOA)

08:43:39 Vice Chair Sullivan joined the meeting.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
08:44:15 Rep. Gist
08:44:42 Neil Peterson, GIA
08:45:44 Rep. Galloway
08:47:16 Neil Peterson, GIA
08:47:41 Rep. Curdy
08:48:36 Rep. Patelis
08:49:31 Rep. Curdy
08:49:46 Chair Noland
08:49:55 Rep. Patelis
08:50:05 Vice Chair Buttrey
08:50:42 Rep. Patelis

Closing by Sponsor:
Rep. Patelis

HEARING ON HB 195

Opening Statement by Sponsor:
08:53:22 Rep. Vince Ricci (R), HD 55, opened the hearing on HB 195, Revise insurance claims history information relating to property insurance.

Proponents' Testimony:
08:55:18 Bob Biskupiak, Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI)
EXHIBIT(buh17a01)

08:59:23 John Iverson, Independent Insurance Agents of Montana (IIAM)
09:00:16 Angela Klein-Hughes, self

Opponents' Testimony:
09:02:07 Greg Van Horssen, State Farm Insurance Company

Informational Testimony: None

Questions from Committee Members and Responses:
09:11:00 Rep. Marshall
09:11:33 Greg Van Horssen, State Farm Insurance Company
09:12:20 Rep. Marshall
09:12:33 Greg Van Horssen, State Farm Insurance Company
09:12:43 Rep. Gist
09:15:17 Greg Van Horssen, State Farm Insurance Company
09:16:05 Rep. Loge
09:17:12 Greg Van Horssen, State Farm Insurance Company
09:18:33 Rep. Galloway
09:25:06 Bob Biskupiak, CSI
09:25:12 Chair Noland
09:25:19 Bruce Spencer, National Association of Mutual Insurance Companies (NAMIC)
09:25:29 Chair Noland
09:25:47 Bruce Spencer, NAMIC
09:28:56 Rep. Olsen
09:31:12 Bob Biskupiak, CSI
09:31:55 Rep. Olsen
09:32:30 Rep. Galloway
09:34:23 Bob Biskupiak, CSI
09:34:47 Chair Noland
09:34:54 Bob Biskupiak, CSI
09:36:06 Rep. Galloway
09:36:58 Greg Van Horssen, State Farm Insurance Company

Closing by Sponsor:
09:37:31 Rep. Ricci

09:38:12 Rep. Gunderson left the meeting.

HEARING ON HB 180

Opening Statement by Sponsor:
09:42:18 Rep. Willis Curdy (D), HD 98, opened the hearing on HB 180, Generally revise board of plumbing laws.
EXHIBIT(buh17a02)

Proponents' Testimony:
09:44:02 John Forkan, Montana State Association of Plumbers and Pipefitters
09:44:49 Scott Lemert, Board of Plumbers
09:47:33 Jeff Sealey, Montana Department of Labor and Industry (DLI)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
09:48:39 Chair Noland
09:49:08 Rep. Curdy

Closing by Sponsor:
09:50:57 Rep. Curdy

HEARING ON HB 210

Opening Statement by Sponsor:
09:51:32 Rep. Moffie Funk (D), HD 82, opened the hearing on HB 210, Provide for licensure of speech-language pathology and audiology assistants.
EXHIBIT(buh17a03)

Proponents' Testimony:
09:54:34 Shelby Midboe, Montana Speech-Language Hearing Association (MSHA)
EXHIBIT(buh17a04)

09:57:16 Rachel Stansberry, Montana Board of Speech-Language Pathologists and Audiologists
EXHIBIT(buh17a05)

10:00:01 Julie Wolter, The School of Speech, Language, Hearing and Occupational Sciences, University of Montana
10:05:27 Abigail St. Lawrence, Montana Speech-Language and Hearing Association (MSHA)
EXHIBIT(buh17a06)

Opponents' Testimony:
10:09:57 Cindi Hamilton, self

Informational Testimony:
10:13:49 Lucy Richards, Department of Labor and Industry, Montana Board of Speech-Language Pathologists and Audiologists (DLI)
EXHIBIT(buh17a07)

Questions from Committee Members and Responses:
10:14:34 Rep. Novak
10:15:40 Julie Wolter, University of Montana
10:16:36 Vice Chair Buttrey
10:17:16 Julie Wolter,University of Montana
10:19:13 Vice Chair Buttrey
10:22:33 Abigail St. Lawrence, MSHA
10:23:08 Rep. Gist
10:23:33 Julie Wolter, University of Montana
10:24:45 Rep. Marshall left the meeting.
10:25:12 Rep. Gist

10:25:26 Julie Wolter, University of Montana
10:26:08 Rep. Galloway
10:26:46 Julie Wolter, University of Montana
10:27:07 Abigail St. Lawrence, MSHA
10:28:38 Rep. Galloway
10:30:58 Abigail St. Lawrence, MSHA
10:32:48 Rep. Novak
10:33:35 Lucy Richards, DLI
10:34:36 Rep. Novak
10:34:53 Lucy Richards, DLI
10:35:08 Chair Noland
10:36:00 Julie Wolter, University of Montana
10:36:38 Lucy Richards, DLI
10:37:01 Chair Noland
10:37:37 Cindi Hamilton, self
10:38:19 Chair Noland
10:38:24 Cindi Hamilton, self
10:38:59 Rep. Galloway
10:42:33 Abigail St. Lawrence, MSHA

Closing by Sponsor:
10:43:00 Rep. Funk

10:44:26 Chair Noland
10:45:03 Rep. Olsen
10:46:00 Chair Noland
10:46:40 Jameson Walker, Legislative Services Division (LSD)
10:48:38 Vice Chair Sullivan
10:48:49 Chair Noland
10:49:13 Vice Chair Sullivan
10:49:48 Rep. Olsen
10:50:56 Vice Chair Buttrey
10:51:48 Jameson Walker, LSD
10:55:32 Vice Chair Sullivan
10:55:46 Jameson Walker, LSD
10:56:04 Vice Chair Sullivan
10:56:13 Jameson Walker, LSD
10:57:14 Vice Chair Buttrey

10:58:38 Recess
11:35:05 Reconvened

EXECUTIVE ACTION ON HB 151

11:35:18 **Motion:** Rep. Buttrey moved that **HB 151 DO PASS**.

Discussion:
11:35:25 Vice Chair Buttrey
11:36:01 Jameson Walker, Legislative Services Division (LSD)

11:36:15 **Motion:** Rep. Olsen moved that **HB 151 BE AMENDED.**
EXHIBIT(buh17a08)

Discussion:
11:36:44 Rep. Olsen
11:44:47 Vice Chair Buttrey

11:45:03 **Vote:** Motion failed 5-15 by roll call vote with Rep. Abbott, Rep. Curdy, Rep. Olsen, Rep. Sullivan and Rep. Whiteman Pena voting aye. Rep. Abbott and Rep. Whiteman Pena voted by proxy.

11:47:10 **Motion/Vote:** Rep. Buttrey moved that **HB 151 DO PASS**. Motion carried 16-4 by roll call vote with Rep. Abbott, Rep. Olsen, Rep. Sullivan and Rep. Whiteman Pena voting no. Rep. Abbott voted by proxy.

EXECUTIVE ACTION ON SB 65

11:48:46 **Motion:** Rep. Buttrey moved that **SB 65 BE CONCURRED IN**.

11:49:10 **Motion:** Rep. Buttrey moved that **SB 65 BE AMENDED**.
EXHIBIT(buh17a09)

Discussion:
11:49:15 Vice Chair Buttrey
11:51:28 Jameson Walker, LSD

11:52:25 **Vote:** Motion carried 13-7 by roll call vote with Rep. Abbott, Rep. Curdy, Rep. Funk, Rep. Novak, Rep. Olsen, Rep. Sullivan and Rep. Whiteman Pena voting no. Rep. Abbott and Rep. Gunderson voted by proxy.

11:53:30 **Motion:** Rep. Buttrey moved that **SB 5 BE CONCURRED IN AS AMENDED**.

Discussion:
11:53:49 Vice Chair Sullivan
11:54:08 Rep. Loge
11:54:22 Rep. Galloway
11:54:59 Rep. Marshall
11:55:28 Rep. Olsen
11:57:47 Chair Noland
11:58:57 Vice Chair Buttrey

11:59:49 **Vote:** Motion carried 12-8 by roll call vote with Rep. Abbott, Rep. Curdy, Rep. Funk, Rep. Harvey, Rep. Novak, Rep. Olsen, Rep. Sullivan and Rep. Whiteman Pena voting no. Rep. Abbott, Rep. Funk and Rep. Gunderson voted by proxy. Rep. Noland will carry the bill.

12:01:24 Vice Chair Buttrey
12:01:36 Chair Noland

ADJOURNMENT

Adjournment: 12:01:55

_____
Jordee Bomgardner, Secretary

jb

Additional Documents:

EXHIBIT(buh17aad.pdf)

EXHIBIT 9
DATE 1-26-2021
SB 65

Amendments to Senate Bill No. 65
3rd Reading Copy

Requested by Steve Fitzpatrick
For the (H) Business and Labor

Prepared by Sonja Nowakowski
01/21/2021, 07:52:36

1. Title, line 9.
Following: the first "DATE"
Strike: ", AN APPLICABILITY DATE,"

2. Page 1, line 27.
Following: "HYGIENISTS,"
Insert: "optometrists,"

3. Page 2, line 8.
Following: the second "FACILITY,"
Insert: "assisted living facility,"

4. Page 3, line 18.
Strike: "may not bring or maintain a civil action alleging exposure or potential exposure"
Insert: "is not liable for civil damages for injuries or death from or relating to exposure or potential exposure"

5. Page 3, line 27.
Following: line 26
Insert: "or death"

6. Page 4, line 8.
Following: "INJURIES"
Insert: "or death"

7. Page 6, line 7.
Following: **"and"**
Insert: **"public health"**

8. Page 6, line 10.
Following: "injury"
Insert: ", death, or property damage"

9. Page 6, line 12.
Following: the second "of"
Insert: "public health"

10. Page 6, line 18.
Following: "or"
Insert: "public health"

11. Page 6, line 20.
Following: "or"
Insert: "public health"

12. Page 11, line 12 through line 13.
Strike: section 15 in its entirety

Renumber: subsequent sections

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Any other type of documents such as:**
  - **@ Petitions {if any} Emails, all documents given to Committee Secretary after meeting.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

HOUSE BUSINESS AND LABOR COMMITTEE

Date: Tuesday, January 26, 2021 **Time:** 08:30 AM
Place: Capitol **Room:** 172

BILLS and RESOLUTIONS HEARD:

HB 180 - Generally revise board of plumbing laws - Rep. Willis Curdy (D)

HB 193 - Allow unlimited winnings for sports boards - Rep. Jimmy Patelis (R)

HB 195 - Revise insurance claims history information relating to property insurance - Rep. Vince Ricci (R)

HB 210 - Provide for licensure of speech-language pathology and audiology assistants - Rep. Moffie Funk (D)

EXECUTIVE ACTION TAKEN:

HB 151 - Do Pass
SB 65 - Be Concurred In as Amended

Comments:

Mark Noland

REP. Mark Noland, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL

DATE: 1-26-2021

NAME	PRESENT	ABSENT/EXCUSED
VICE CHAIR SULLIVAN		✓
REP. CURDY	✓	
REP. OLSEN	✓	
REP. FUNK	✓	
REP. ABBOTT		✓
REP. FITZGERALD	✓	
REP. WHITEMAN PENA	✓	
REP. ANDERSON	✓	
REP. GALLOWAY	✓	
REP. LOGE	✓	
REP. SEEKINS-CROWE	✓	
VICE CHAIR BUTTREY	✓	
REP. MARSHALL	✓	
REP. NOVAK	✓	
REP. GIST	✓	
REP. GUNDERSON	✓	
REP. ZOLNIKOV	✓	
REP. HARVEY	✓	
REP. DURAM	✓	
CHAIR NOLAND	✓	

20 MEMBERS

HOUSE STANDING COMMITTEE REPORT

January 26, 2021

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 65** (second house second reading copy -- tan) **be concurred in as amended.**

Signed: Mark Noland
Representative Mark Noland, Chair

To be carried by Representative Mark Noland

And, that such amendments read:

1. Title, line 9.
Following: the first "DATE"
Strike: ", AN APPLICABILITY DATE,"

2. Page 1, line 27.
Following: "HYGIENISTS,"
Insert: "optometrists,"

3. Page 2, line 8.
Following: the second "FACILITY,"
Insert: "assisted living facility,"

4. Page 3, line 18.
Strike: "may not bring or maintain a civil action alleging exposure or potential exposure"
Insert: "is not liable for civil damages for injuries or death from or relating to exposure or potential exposure"

5. Page 3, line 27.
Following: line 26
Insert: "or death"

6. Page 4, line 8.
Following: "INJURIES"
Insert: "or death"

7. Page 6, line 7.
Following: **"and"**
Insert: **"public health"**

Committee Vote:
Yes 12, No 8
Fiscal Note Required __

SB0065001SC16515.hlc

1.26.21 JR 12:56pm

8. Page 6, line 10.
Following: "injury"
Insert: ", death, or property damage"

9. Page 6, line 12.
Following: the second "of"
Insert: "public health"

10. Page 6, line 18.
Following: "or"
Insert: "public health"

11. Page 6, line 20.
Following: "or"
Insert: "public health"

12. Page 11, line 12 through line 13.
Strike: section 15 in its entirety
Renumber: subsequent sections

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 151** (first reading copy -- white) **do pass**.

Signed: Mark Noland
Representative Mark Noland, Chair

- END -

Committee Vote:
Yes 16, No 4
Fiscal Note Required __

HB0151001SC.hlc

1.26.21
JR 12:45pm

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 151 DATE 1-26-2021

MOTION Be Amended HB 151.1.1

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN	✓		
REP. CURDY	✓		
REP. OLSEN	✓		
REP. FUNK		✓	
REP. ABBOTT	✓		✓
REP. WHITEMAN PENA	✓		✓
REP. FITZGERALD		✓	
REP. ANDERSON		✓	
REP. GALLOWAY		✓	
REP. LOGE		✓	
REP. SEEKINS-CROWE		✓	
REP. DURAM		✓	
REP. MARSHALL		✓	
REP. NOVAK		✓	
REP. GIST		✓	
REP. GUNDERSON		✓	
REP. ZOLNIKOV		✓	
REP. HARVEY		✓	
VICE CHAIR BUTTREY		✓	
CHAIR NOLAND		✓	

20 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER HB 151 DATE 1-26-2021

MOTION DO PASS

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN		✓	
REP. CURDY	✓		
REP. OLSEN		✓	
REP. FUNK	✓		
REP. ABBOTT		✓	✓
REP. WHITEMAN PENA		✓	
REP. FITZGERALD	✓		
REP. ANDERSON	✓		
REP. GALLOWAY	✓		
REP. LOGE	✓		
REP. SEEKINS-CROWE	✓		
REP. DURAM	✓		
REP. MARSHALL	✓		
REP. NOVAK	✓		
REP. GIST	✓		
REP. GUNDERSON	✓		
REP. ZOLNIKOV	✓		
REP. HARVEY	✓		
VICE CHAIR BUTTREY	✓		
CHAIR NOLAND	✓		

20 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 65 DATE 1-26-2021

MOTION Be Amended SB 65.2.8

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN		✓	
REP. CURDY		✓	
REP. OLSEN		✓	
REP. FUNK		✓	
REP. ABBOTT		✓	✓
REP. WHITEMAN PENA		✓	
REP. FITZGERALD	✓		
REP. ANDERSON	✓		
REP. GALLOWAY	✓		
REP. LOGE	✓		
REP. SEEKINS-CROWE	✓		
REP. DURAM	✓		
REP. MARSHALL	✓		
REP. NOVAK		✓	
REP. GIST	✓		
REP. GUNDERSON	✓		✓
REP. ZOLNIKOV	✓		
REP. HARVEY	✓		
VICE CHAIR BUTTREY	✓		
CHAIR NOLAND	✓		

20 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 65 DATE 1-26-2021

MOTION Be Concurred In As Amended

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN		✓	
REP. CURDY		✓	
REP. OLSEN		✓	
REP. FUNK		✓	✓
REP. ABBOTT		✓	✓
REP. WHITEMAN PENA		✓	
REP. FITZGERALD	✓		
REP. ANDERSON	✓		
REP. GALLOWAY	✓		
REP. LOGE	✓		
REP. SEEKINS-CROWE	✓		
REP. DURAM	✓		
REP. MARSHALL	✓		
REP. NOVAK		✓	
REP. GIST	✓		
REP. GUNDERSON	✓		✓
REP. ZOLNIKOV	✓		
REP. HARVEY		✓	
VICE CHAIR BUTTREY	✓		
CHAIR NOLAND	✓		

20 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. Sullivan.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB151	Do Pass Amendment # 151.1.1	X	
HB151	DO PASS		X
~~HB~~			
SB65	DO PASS Amendment # 65.2.8		X
SB65	DO PASS AS Amended		X

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Sullivan for any amendments proposed on this date.

Rep. VIA EMAIL Rep. Abbott 1/26/2021

(Signature) (Print Name) (Meeting Date)

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. HARVEY.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB-65	DO PASS AS AMENDED		X

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. HARVEY for any amendments proposed on this date.

Rep. Jeffie Funk (Signature) Rep. Funk (Print Name) 1/26/2021 (Meeting Date)

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. Buttrey.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
HB151	Amend 151.1.1		X
HB151	Do Pass	X	
SB65	Amend 65.2.8	X	
SB65	Do Concur	X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Galloway for any amendments proposed on this date.

Rep. _____ Rep. Gunderson 1/26/21

(Signature) (Print Name) (Meeting Date)

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Tuesday, January 26, 2021
HB 193 - Allow unlimited winnings for sports boards
Sponsor: **Rep. Jimmy Patelis (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Jay Iverson	MTA	X		
Neil Peterson	CIA	X		
Ronda Wragers	MCMUA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Tuesday, January 26, 2021
HB 210 - Provide for licensure of speech-language pathology and audiology assistants
Sponsor: **Rep. Moffie Funk (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Cindi Hamilton	self		X	
~~Patrick Webb~~	~~Americans for Prosperity~~		~~X~~	
Abigail St. Lawrence	MT Speech-Lang. & Hrg. Assn	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Tuesday, January 26, 2021
HB 195 - Revise insurance claims history information relating to property insurance
Sponsor: **Rep. Vince Ricci (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Tom Mottet	Farmers		X	
John Iverson	IIAMT	X		
Kerri Simmons	IIAMT	X		
Bob Biskupich	CSI	X		
Greg Oestreicher	State Farm		X	
Bruce Spencer	~~AIA~~ NAMIC		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE

Tuesday, January 26, 2021
HB 180 - Generally revise board of plumbing laws
Sponsor: **Rep. Willis Curdy (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
JOHN FORKAN	MT ASSN PLUMBERS + PFs	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

WITNESS STATEMENT

Bomgardner, Jordee

From:	leg-noreply@mt.gov
Sent:	Monday, January 25, 2021 9:10 AM
To:	LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject:	Public Comment for Bill HB-210: Provide for licensure of speech-language pathology and audiology assistants 2021-01-26 08:30 AM - (H) Business and Labor Successfully Submitted on 01-25-21 09:10

Details:
Bill: HB-210: Provide for licensure of speech-language pathology and audiology assistants 2021-01-26 08:30 AM - (H) Business and Labor
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: MFPE - Montana Federation of Public Employees
Name: Diane Fladmo
Email: dfladmo@mfpe.org
Phone: (406) 546-1735
City, State: Helena, MT
Written Statement: Dear Chair Noland and House Business and Labor Committee,

On behalf of MFPE, I offer support for HB210 and urge passage.

Respectfully,

Diane Fladmo, Director of Public Policy
MPFE
Files:
Testify via Zoom: Yes
Zoom Method: Computer

House Business and Labor Committee Zoom Testimony Requests Meeting: 01/26/2020 8:30 AM

Bill	Name	Position	Location	Email	Affiliation
HB-180	Jeff Sealey	Proponent	Helena	jeffrey.sealey@mt.gov	MT Department of Labor and Industry
	Scott E. Lemert	Proponent	Livingston	scott@callranger.com	Board of Plumbers
HB-195	Angela Klein-Hughes	Proponent	Billings	angelahughessells@hotmail.com	N/A
	Josh Decker	Opponent	Missoula	deckerjrekced@gmail.com	N/A
HB-210	Rachel Stansberry	Proponent	Lewistown	Rstansberry@lewistown.k12.mt.us	Board of Speech Language Pathologists and Audiologists
	Julie Wolter	Proponent	Missoula	Julie.wolter@mso.umt.edu	University of Montana
	Diane Fladmo	Proponent	Helena	dfladmo@mfpe.org	MT Federation of Public Employees
	Shelby Midboe	Proponent	Missoula	mshapresident@gmail.com	MT Speech-Language Hearing Association
	Lucy Richards	Informational Witness	Helena	lurichards@mt.gov	Dept. Labor & Industry Board of SLP & Audiologists